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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, August 16, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

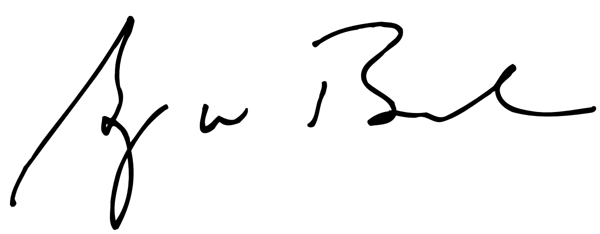
Notice of July 19, 2005

Continuation of the National Emergency Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia

On July 22, 2004, by Executive Order 13348, I declared a national emergency and ordered related measures blocking the property of certain persons and prohibiting the importation of certain goods from Liberia, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). I took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of former Liberian President Charles Taylor and other persons, in particular their unlawful depletion of Liberian resources and their removal from Liberia and secreting of Liberian funds and property, which have undermined Liberia's transition to democracy and the orderly development of its political, administrative, and economic institutions and resources. I further noted that the Comprehensive Peace Agreement signed on August 18, 2003, and the related cease-fire have not yet been universally implemented throughout Liberia, and that the illicit trade in round logs and timber products is linked to the proliferation of and trafficking in illegal arms, which perpetuate the Liberian conflict and fuel and exacerbate other conflicts throughout West Africa.

Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on July 22, 2004, and the measures adopted on that date to deal with that emergency, must continue in effect beyond July 22, 2005. Therefore, in accordance with section 202(d), I am continuing for 1 year the national emergency declared in Executive Order 13348.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
July 19, 2005.

[FR Doc. 05–14555
Filed 7–20–05; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 70, No. 139
Thursday, July 21, 2005

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH51

Export and Import of Nuclear Equipment and Material: Nuclear Grade Graphite

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) export/import regulations in 10 CFR part 110 are being revised to remove the NRC's export licensing requirements for nuclear grade graphite for non-nuclear end use. The purpose of this change is to remove from NRC export licensing jurisdiction nuclear materials which are not of significance from a nuclear proliferation perspective. The responsibility for the licensing of exports of nuclear grade graphite for non-nuclear end use will be transferred to the Department of Commerce (DOC). The DOC is publishing elsewhere in this **Federal Register** a final rule that places such exports under its jurisdiction.

DATES: Effective July 21, 2005.

ADDRESSES: Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Schuyler-Hayes, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2333, e-mail *ssh@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this rule is to update NRC's regulations in 10 CFR part 110 governing the export of nuclear grade graphite. Neither the Atomic Energy Act (AEA) nor the Nuclear Non-proliferation Act (NNPA) explicitly requires that the export of nuclear grade graphite be controlled by the NRC. The Commission has controlled the export of nuclear grade graphite pursuant to Section 109b. of the AEA, due to its prior determination that nuclear grade graphite is an ''item or substance'' that is ''especially relevant from the standpoint of export control because of [its] significance for nuclear explosive purposes.'' As a result of technological advancements in the production of graphite, virtually all graphite produced today can be considered ''nuclear grade.'' The NRC's licensing experience has been that most nuclear grade graphite is exported only for non-nuclear end use in the manufacture of commercial and industrial items.

Other supplier nations have export controls over nuclear grade graphite but have limited them to cover exports ''for use in a nuclear reactor.'' This limitation appears in both the Nuclear Non-Proliferation Treaty Exporters Committee (Zangger Committee) and the Nuclear Suppliers Group (NSG) definitions of controlled items. *See, e.g.*, International Atomic Energy Agency INFCIRC/209 and 254 respectively.

The NRC has determined, after consultation with the Executive Branch, that nuclear grade graphite for non-nuclear end use is not an ''item or substance'' that is ''especially relevant from the standpoint of export control because of [its] significance for nuclear explosive purposes.'' *See* Section 109b. of the AEA.[1] The Executive Branch, including the Departments of State, Energy, Defense, and Commerce, concurs in the NRC's determination. The history of the use of nuclear grade graphite exported under the Commission's authority indicates that graphite has not been diverted for illicit purposes to produce weapons-grade material or for use in unsafeguarded nuclear activities. To the extent that any risk of diversion may exist, exports of nuclear grade graphite for non-nuclear end use will continue to be controlled by the DOC. Thus, any effort to divert exported material for illicit purposes would likely be discovered by the cognizant national authority or the international community.

Accordingly, the Commission has concluded, with the concurrence of the Executive Branch, that U.S. regulatory and commercial interests will be best served by the DOC assuming export control over all nuclear grade graphite for non-nuclear end use. The DOC is publishing regulations establishing licensing controls over this class of material.

This final rule limits NRC's jurisdiction over exports of nuclear grade graphite to nuclear end use. The definition of ''nuclear grade graphite'' in 10 CFR 110.2 is being replaced with a definition of ''nuclear grade graphite for nuclear end use.'' Nuclear grade graphite for nuclear end use is being defined in § 110.2 as ''graphite having a purity level of better than (*i.e.*, less than) 5 parts per million boron equivalent * * * and intended for use in a nuclear reactor.'' This definition is consistent with the definition in the Zangger Committee and NSG Part 1 Trigger Lists. The density requirement of 1.5 grams per cubic centimeter in the current definition of nuclear grade graphite is being removed. Graphite powder at any density level for nuclear end use, including the coating of fuel spheres in pebble bed reactor applications, is being captured under NRC jurisdiction. The general license for the export of nuclear grade graphite for nuclear end use in

[1] The NRC has not, however, made the same finding under the Section 109b. of the AEA with respect to exports of nuclear grade graphite for nuclear end use, which the NRC will continue to regulate as a material ''especially relevant for export control because of [its] significance for nuclear explosive purposes.''

§ 110.25 is being revoked. All exports of nuclear grade graphite for nuclear end use will now require a specific license from the NRC, including Commission and Executive Branch review (see §§ 110.40 and 41), and will be noticed in the **Federal Register** (*see* § 110.70). Finally, all NRC license provisions for non-nuclear end use exports of nuclear grade graphite are being removed. A note is being added which states that the export of nuclear grade graphite for non-nuclear end use is regulated by the DOC.

This final rule eliminates the NRC licensing burden on exporters for nuclear grade graphite exported purely for non-nuclear end use which, under current industry trends, constitutes the majority of nuclear grade graphite being exported. Removing exports of nuclear grade graphite for non-nuclear end use from 10 CFR part 110 will also reduce the burden under the Paperwork Reduction Act for licensees exporting nuclear grade graphite for non-nuclear end use.

The NRC has determined that this rule will pose no unreasonable risk to the public health and safety or the common defense and security.

Administrative Procedure Act

The provisions of the Administrative Procedure Act under 5 U.S.C. 553 requiring notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date are inapplicable because this rule involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Accordingly, this final rule is effective immediately upon publication in the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This final rule does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the regulation.

Paperwork Reduction Act Statement

This final rule eliminates the burden on licensees for recordkeeping and reporting requirements to obtain a license for the export of nuclear grade graphite for non-nuclear end use and maintain associated records under 10 CFR part 110. The public burden for information collection and recordkeeping requirements to export nuclear grade graphite for non-nuclear end use is estimated to average 3.6 hours per licensee. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by OMB, approval numbers 3150–0027 and 3150–0036.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The NRC has sole control of the export of nuclear grade graphite for nuclear applications. There is no other alternative to amending the regulations at 10 CFR part 110 to reflect changing circumstances. The final rule will reduce the burden on licensees and the cost to the public without posing an unreasonable risk to the public health and safety or to the common defense and security.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. This rule eliminates NRC license requirements for the export of nuclear grade graphite for non-nuclear end use. The companies which export nuclear grade graphite do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act (5 U.S.C. 601(3)), or the Size Standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 1. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; sec 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

■ 2. In § 110.2, the definition of ''nuclear grade graphite'' is removed and the definition of ''nuclear grade graphite for nuclear end use'' is added to read as follows:

§ 110.2 Definitions.

* * * * *

Nuclear grade graphite for nuclear end use means graphite having a purity level better than (*i.e.*, less than) 5 parts per million boron equivalent, as measured according to ASTM standard C1233–98 and intended for use in a nuclear reactor. (Nuclear grade graphite for non-nuclear end use is regulated by the Department of Commerce.)

* * * * *

■ 3. In § 110.9, paragraph (e) is revised to read as follows:

§ 110.9 List of Nuclear Material under NRC export licensing authority.

* * * * *

(e) Nuclear grade graphite for nuclear end use.

§ 110.25 [Removed]

■ 4. Remove § 110.25.

■ 5. Amend § 110.40 as follows:

■ a. Revise paragraph (b)(3);

■ b. Redesignate paragraphs (b)(4) through (b)(7) as paragraphs (b)(5) through (b)(8);

■ c. In newly redesignated paragraph (b)(7), further redesignate paragraph (iv) as paragraph (b)(7)(v);

■ d. Revise redesignated paragraph (b)(7)(iii);

■ e. Add new paragraphs (b)(4) and (b)(7)(iv).

§ 110.40 Commission review.

* * * * *

(b) * * *

(3) Nuclear grade graphite for nuclear end use.

(4) 1,000 kilograms or more of deuterium oxide (heavy water), other than exports of heavy water to Canada.

* * * * *

(7) * * *

(iii) Nuclear grade graphite for nuclear end use;

(iv) 250 kilograms of source material or heavy water; or

* * * * *

■ 6. In § 110.41, paragraph (a)(3) is revised, paragraphs (a)(4) through (a)(9) are redesignated as paragraphs (a)(5) through (a)(10), and a new paragraph (a)(4) is added to read as follows:

§ 110.41 Executive branch review.

(a) * * *

(3) Nuclear grade graphite for nuclear end use.

(4) More than 100 curies of tritium, and deuterium oxide (heavy water), other than exports of heavy water to Canada.

* * * * *

■ 7. In § 110.42, the introductory language of paragraph (b) is revised to read as follows:

§ 110.42 Export licensing criteria

* * * * *

(b) The review of license applications for the export of nuclear equipment, other than a production or utilization facility, and for deuterium and nuclear grade graphite for nuclear end use, is governed by the following criteria:

* * * * *

■ 8. In § 110.70, paragraph (b)(3) is revised, paragraph (b)(4) is redesignated as paragraph (b)(5), and a new paragraph (b)(4) is added to read as follows:

§ 110.70 Public notice of receipt of an application

* * * * *

(b) * * *

(3) 10,000 kilograms or more of heavy water.

(4) Nuclear grade graphite for nuclear end use.

* * * * *

Dated in Rockville, Maryland, this 12th day of October, 2004.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

Editorial note: This document was received at the Office of the Federal Register on July 15, 2005.

[FR Doc. 05–14208 Filed 7–20–05; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 2005–18]

Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of rules to Congress.

SUMMARY: The Federal Election Commission is amending its rules regarding contributions to the separate segregated fund (''SSF'') of a trade association by employee-stockholders and executive and administrative personnel of corporations that are members of the trade association (collectively, ''solicitable class employees''). The revised rules will no longer prohibit corporate members of a trade association from using a payroll deduction or check-off system for employee contributions to the trade association's SSF. Instead, these final rules will allow a corporate member of a trade association to provide incidental services to collect and forward contributions from its solicitable class employees to the SSF of the trade association, including use of a payroll deduction or check-off system, upon written request of the trade association. These final rules will also require any member corporation that provides incidental services for contributions to a trade association's SSF, as well as the corporation's subsidiaries, divisions, branches and affiliates, to provide the same services for contributions to the SSF of any labor organization that represents members working for the corporation, or the corporation's subsidiaries, divisions, branches or affiliates, upon written request of the labor organization and at a cost not to exceed actual expenses incurred. Additional information appears in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: These rules are effective August 22, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Amy L. Rothstein, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is promulgating final rules at 11 CFR 114.2 and 114.8 as the last step in a rulemaking process that began in 2003, when the Commission received a petition for rulemaking (the ''Petition'') from America's Community Bankers and its SSF, the America's Community Bankers Community Campaign Committee (collectively, ''Petitioners''). Petitioners asked the Commission to change its rules to allow a corporate member of a trade association to make payroll deductions and check-off systems available to the corporation's restricted class employees for their voluntary contributions to the trade association's SSF.

The Commission issued a Notice of Availability stating that the Petition was available for public review and comment. *See* Notice of Availability, 68 FR 60887 (October 24, 2003). The comment period closed on November 24, 2003. The Commission received 30 comments in response to the Notice of Availability. All of the comments supported the Petition.

After considering the comments on the Petition, the Commission issued a Notice of Proposed Rulemaking (''NPRM''). *See* 69 FR 76628 (Dec. 22, 2004). The NPRM proposed to change the Commission's rules at 11 CFR 114.2 and 114.8 to allow a corporate member of a trade association to provide incidental services to collect and forward voluntary contributions from its solicitable class employees to the trade association's SSF, including use of a payroll deduction or check-off system, upon written request of the trade association. Under the proposed rules, any corporate member of a trade association that provided incidental services for contributions to the trade association's SSF also would have had to provide the same services for contributions to the SSF of any labor organization that represented members working for the corporation, upon written request of the labor organization and at a cost not to exceed actual expenses incurred.

The Commission received 34 comments in response to the NPRM. None of the comments opposed the proposed changes to the Commission's rules, including a letter from the Internal Revenue Service stating that it had ''no comments at this time.'' The comments are discussed further in the Explanation & Justification, below.

The Commission held a public hearing on May 17, 2005, on this rulemaking.[1] At the hearing, representatives of Petitioner and two other commenters testified. For purposes of this document, the terms ''comment'' and ''commenter'' apply to both written comments and oral testimony at the public hearing. The written comments and the transcripts of the hearing are available at *http://www.fec.gov/law/law_rulemakings.shtml*.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on July 15, 2005.

Explanation and Justification

The Federal Election Campaign Act of 1971, as amended (the ''Act''), and the Commission's regulations permit any trade association to solicit contributions to the trade association's SSF from the stockholders and executive and administrative personnel, and their families, of the trade association's member corporations, so long as these member corporations separately and specifically approved the solicitation and have not approved a solicitation by any other trade association for the same calendar year. *See* 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c). Once these conditions are met, ''[t]here is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use.'' 11 CFR 114.8(e)(3).

Although the regulations do not limit the methods that a trade association may use to solicit and facilitate the making of voluntary contributions to its SSF from the solicitable class employees of consenting member corporations, before this rulemaking the regulations did limit the methods that a consenting member corporation may use to collect and forward those contributions. Specifically, prior to this rulemaking, 11 CFR 114.8(e)(3) stated that a ''member corporation may not use a payroll deduction or check-off system for executive or administrative personnel contributing to the separate segregated fund of the trade association.'' The Commission has interpreted this prohibition to extend to all employees of the corporation who may be solicited by the trade association (*i.e.*, solicitable class employees), including the member corporation's employee-stockholders. *See* Advisory Opinion (''AO'') 1989–3.

In recent years, the Commission has recognized that corporations have some latitude in collecting and forwarding contributions to a trade association's SSF, so long as the collection does not involve employee payroll deductions. For example, in AO 2003–22, the Commission interpreted the regulations to permit a corporate member of a trade association to collect voluntary contributions in the form of paper checks from its executive and administrative personnel, and to forward the contributions to the trade association's SSF. In that advisory opinion, the Commission also interpreted the regulations to permit corporate executives who were collecting employee contribution checks to use the member corporation's inter-office mail system to help collect the checks, and to provide envelopes and postage in which contributors could send their contributions to the trade association's SSF. *See also* AO 2000–4 (incorporated credit union members of a trade association permitted to deduct and transfer contributions to the trade association's SSF from the share accounts of the credit unions' individual members).

These final rules are substantively identical to the rules proposed by the Commission in the NPRM, except for one change, discussed below. The rules:

- Remove the prohibition on corporate use of a payroll deduction or check-off system for solicitable class employee contributions to the SSF of a trade association of which the corporation is a member (11 CFR 114.8(e)(3));
- Specifically authorize a member corporation to provide incidental services to collect and forward contributions from its solicitable class employees to a trade association's SSF, including a payroll deduction or check-off system, upon written request of the trade association (new 11 CFR 114.8(e)(4));
- Require any corporation that provides these incidental services, and the corporation's subsidiaries, divisions, branches and affiliates, also to make the same services available to a labor organization representing members who work for the corporation, or the corporation's subsidiaries, divisions, branches or affiliates, for contributions to the labor organization's SSF by members of the labor organization, upon written request by the labor organization and at a cost not to exceed any actual expenses incurred (new 11 CFR 114.8(e)(4)); and
- Clarify that the provision of incidental services pursuant to new 11 CFR 114.8(e)(4) is not prohibited corporate facilitation (new 11 CFR 114.2(f)(5)).

1. 11 CFR 114.8—Trade Associations

Generally, 11 CFR 114.8 sets out the circumstances under which an incorporated trade association may solicit contributions to its SSF. It defines the group of persons that may be solicited, *e.g.*, stockholders and the executive and administrative personnel of member corporations that give a yearly prior approval to the trade association to solicit such personnel, and the methods that may be used for such solicitation. Section 114.8(e) more particularly addresses the timing and methods of such solicitation.

A. 11 CFR 114.8(e)(3)

The Commission is deleting the second sentence of former 11 CFR 114.8(e)(3) in its entirety. This second sentence prohibited a corporation from using a payroll deduction or check-off system for contributions by the corporation's solicitable class employees to the SSF of a trade association of which the corporation is a member. The Commission is making this change to conform paragraph 114.8(e)(3) with new paragraph 114.8(e)(4), discussed below.

[1] *See* Notice of Public Hearing, Candidate Solicitation at State, District and Local Party Fundraising Events; Definition of ''Agent'' for BCRA Regulations; Payroll Deductions By Member Corporations for Contributions to a Trade Association's Separate Segregated Fund, 70 FR 21,163 (April 25, 2005).

B. 11 CFR 114.8(e)(4)

The Commission is adding a new paragraph 114.8(e)(4) to allow, but not require, a corporation to provide incidental services to collect and forward contributions from its solicitable class employees to the SSF of a trade association of which the corporation is a member, upon written request of the trade association. The new rule expressly provides that incidental services may include a payroll deduction or check-off system.

(i) Incidental Services

The Commission is changing the rules to allow a corporate member of a trade association to provide incidental services to collect and forward voluntary contributions from solicitable class employees to the trade association's SSF, because of the special relationship that exists between a trade association and its member corporations. This special relationship is firmly rooted in the Act. Although the Act generally prohibits a corporation and its SSF from soliciting contributions from anyone other than the corporation's own stockholders, executive and administrative personnel, and their families, the Act specifically allows a trade association, including an incorporated trade association and its SSF, to solicit contributions from the stockholders, executive and administrative personnel, and their families, of the trade association's member corporations, to the extent specifically approved by the member corporations. *See* 2 U.S.C. 441b(b)(4)(A)(i); 2 U.S.C. 441b(b)(4)(D).[2]

The Commission has recognized this special relationship before. For example, the Commission specifically rejected an interpretation of the Act that would have required a trade association to reimburse its member corporations for incidental costs related to assistance with fundraising by the trade association for its SSF. As the Commission stated, ''to require a trade association to reimburse the corporation for incidental services, such as the distribution of the association's [SSF fundraising] material via the corporation's internal mailing system, seemed tenuous since the trade association will be paying for the substantial costs of the solicitation with the membership fees from corporations. Consequently, the Commission has not required the trade association to reimburse the corporation for such incidental expenditures.''[3] *See also* AO 1978–13 (''Just as a corporation is not precluded from giving incidental aid, which entails incidental expenditures, to solicitations made by a trade association, a corporate member of a trade association is not precluded from making incidental expenditures regarding administration of the trade association's [SSF].'') (citation omitted); and AO 1979–8 (''Since [the trade association] is permitted to spend dues monies from its corporate members for the establishment, administration, and solicitation of contributions to the PAC, it may also have the benefit of incidental services * * * provided by executive and administrative personnel of its member corporations who conduct those same activities.'').

(ii) Payroll Deductions

Nearly all the commenters observed that it no longer makes sense to distinguish between payroll deductions and other forms of permissible incidental services. The Commission agrees that technological and societal changes over the past 29 years support a change in the treatment of payroll deductions, when used by a corporate member of a trade association.

The availability and use of electronic payments in general have changed considerably since 1976, when the Commission first prohibited corporate use of payroll deduction and check-off systems for employee contributions to a trade association's SSF. Although ''it has taken years of investments in electronic infrastructure at homes and businesses to support the use of electronic payments as a convenient and relatively low-cost alternative to checks,''[4] electronic payment systems are now widely used by Federal agencies, such as the Internal Revenue Service and the Social Security Administration, and by the private sector. In fact, there were almost 10 billion more electronic payments in this country than payments by paper check in 2003.[5]

Payroll deductions, in particular, are increasingly prevalent in the workplace. A large number of employees use them to pay for a variety of goods and services, such as health and life insurance premiums, flexible spending accounts, retirement savings plans, charitable contributions, loan and mortgage payments, gym memberships and club dues. Several commenters observed that payroll deductions are widely available, reliable, simple to administer, convenient, and impose minimal or no cost on the corporations that offer them. The Commission now believes that a member corporation's collection and forwarding of voluntary contributions from solicitable class employees to a trade association's SSF via payroll deduction under these circumstances is a permissible ''incidental service.''

Several commenters pointed out the important public policy objectives that will be furthered by allowing solicitable class employees to contribute voluntarily through payroll deductions or check-off systems to the SSF of a trade association of which their corporation is a member. By permitting solicitable class employees to sign up for automatic payroll deductions, rather than requiring them to write a contribution check, these employees may spread out their contributions over time, thereby potentially enhancing their participation in the political process. Moreover, the ability to participate in the process by contributing to a trade association's SSF is particularly important for employees of the many small companies that rely exclusively on their trade associations' SSFs to serve as their political voice. This position was reiterated by two of the commenters at the Commission's May 17, 2005 hearing.

As the Supreme Court noted in *Buckley* v. *Valeo*, ''[e]ncouraging citizen participation in political campaigns while continuing to guard against the corrupting potential of large financial contributions to candidates' is an important goal of the Act. *Buckley* v. *Valeo*, 424 U.S. 1, 36 (1976). The Commission believes that permitting a corporation's solicitable class employees to make voluntary contributions to the SSF of the corporation's trade association through payroll deduction will help to achieve this objective.

In addition, a number of commenters indicated that the use of payroll deductions for voluntary contributions from solicitable class employees to a trade association's SSF will make it easier for the SSF to track and report such contributions. The disclosure requirements of the Act serve three important government interests: (1) Providing the electorate with information; (2) deterring actual corruption and avoiding the appearance

[2] A member corporation may not approve solicitations by more than one trade association in any calendar year. 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c)(2).

[3] Explanation and Justification, Federal Election Regulations, House Document No. 95–44, 95th Cong., 1st Session at 114 (1977).

[4] Remarks by Alan Greenspan at the Federal Reserve Payments System Development Committee 2003 Conference, Oct. 29, 2003.

[5] Federal Reserve Board Press Release: Federal Reserve Studies Confirm Electronic Payments Exceed Check payments for the First Time (Dec. 6, 2004), *available at http://www.federalreserve.gov/boarddocs/press/other/2004/20041206/default.htm* (viewed June 2, 2005).

of corruption; and (3) gathering data necessary for enforcement of the Act. *See McConnell* v. *Federal Election Commission*, 540 U.S. 93, 196 (2003). The Commission believes that this final rule will help to further these important interests by enhancing the ability of a trade association's SSF to track and report individual employee contributions.

Removing the regulatory prohibition on the use of payroll deduction and check-off systems could also help to reduce some perceived disadvantages in the fundraising abilities of trade association SSFs. Some commenters indicated that the current prohibition in 11 CFR 114.8(e)(3) disadvantages SSFs sponsored by smaller trade associations that try to compete in the political arena against SSFs sponsored by larger trade associations, because SSFs sponsored by smaller trade associations have fewer resources to devote to fundraising. Other commenters complained that the prohibition further disadvantages SSFs sponsored by trade associations that try to compete with larger corporate and labor organization SSFs, because corporate and labor organization SSFs are allowed to offer payroll deductions for contributions to their own SSFs and are not required to obtain approval before soliciting restricted class or member employees. Removing the prohibition on member corporations' use of payroll deductions to collect solicitable class employee contributions to a trade association's SSF will help to reduce these perceived disadvantages.

The Commission cautions, however, that the provision of incidental services by a member corporation to a trade association remains subject to certain requirements under the Act and Commission regulations. For example, the member corporation must first ''separately and specifically approve'' the solicitation of its solicitable class employees by a trade association, and it cannot authorize more than one trade association to solicit these employees in any calendar year. *See* 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c), (d).

Moreover, contributions made via payroll deduction or check-off system trigger special recordkeeping obligations for the recipient SSF. Each contributor must affirmatively authorize the deduction in writing, in advance, and the authorization must manifest the contributor's ''specific and voluntary donative intent.'' *See Federal Election Commission* v. *National Education Association*, 457 F.Supp. 1102 (D.D.C. 1978); AOs 2001–4 and 1997–25. The SSF must maintain the authorization for audit or inspection purposes for at least three years after the filing date of each report that discloses a contribution made pursuant to the authorization. *See* 11 CFR 104.14(b)(2), 102.9(c); AO 2000–4, n.3.

(iii) Equal Access for Labor Organizations

Under the rule proposed in the NPRM, any member corporation that provided incidental services to collect and forward contributions by certain persons to a trade association's SSF also would have had to make these incidental services available to a labor organization representing members working for the corporation, upon written request of the labor organization and at a cost that does not exceed any actual expenses incurred. As stated in the NPRM, the Commission considers this requirement to be necessary to prevent circumvention of provisions in the Act and Commission regulations that seek to prevent corporate SSFs from gaining an unfair fundraising advantage over labor organization SSFs. *See* 69 FR 76631.

One commenter asserted that the Act requires the Commission to change the proposed rule by extending the equal access requirement to a member corporation's subsidiaries, divisions, branches and affiliates, in addition to the corporation itself. The commenter argued that, if a corporate member of a trade association uses a payroll deduction or check-off system to collect and forward employee contributions from solicitable class employees to the trade association's SSF, then a labor organization representing any members that work for the corporation or for any of the corporation's subsidiaries, divisions, branches or affiliates would be entitled to require the corporation and the corporation's subsidiaries, divisions, branches or affiliates to provide a payroll deduction or check-off system to collect and forward contributions to the labor organization's SSF.

The commenter stated that this change to the proposed rule is mandated by 2 U.S.C. 441b(b)(6). Section 441b(b)(6) provides that ''[a]ny corporation, including its subsidiaries, branches, divisions, and affiliates,'' that uses a method of soliciting voluntary contributions or of facilitating the making of voluntary contributions, must make that method available to a labor organization ''representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates,'' upon written request of the labor organization and at a cost sufficient only to reimburse the corporation for its expenses. 2 U.S.C. 441b(b)(6).

In support of the rule proposed in the NPRM, however, the Petitioner asserted that 2 U.S.C. 441b(b)(6) must be read together with 2 U.S.C. 441b(b)(4)(D), the statutory provision enabling the solicitation of executive and administrative employees of member corporations for contributions to a trade association's SSF. While acknowledging that the Act and regulations strike a careful balance between corporations and labor organizations, the Petitioner argued that 2 U.S.C. 441b(b)(4)(D) specifically limits the scope of trade association solicitations of solicitable employees of the member corporation, and does not extend the scope of permissible solicitations to other employees of non-member subsidiaries or affiliates.

The Commission believes that 2 U.S.C. 441b(b)(6) and its implementing regulation, 11 CFR 114.5(k)(1), require the proposed rule to be changed as requested by the commenter. Although, as noted by the Petitioner, a trade association's ability to seek solicitation rights from member corporations is governed by 2 U.S.C. 441b(b)(4)(D), the member corporations themselves are separately subject to the broad equal access provisions of 2 U.S.C. 441b(b)(6) and 11 CFR 114.5(k)(1). Moreover, these equal access provisions do not distinguish between corporate methods of facilitating the making of contributions to a corporation's own SSF and corporate methods of facilitating the making of contributions to the SSF of a trade association of which the corporation is a member. Rather, the provisions apply broadly to ''[*a*]*ny* corporation * * * that utilizes a method of * * * facilitating the making of voluntary contributions.'' 2 U.S.C. 441b(b)(6); 11 CFR 114.5(k). Methods of facilitating the making of contributions include payroll deduction and check-off systems. *See* 114.1(f).

Thus, under this new rule, any corporate member of a trade association that chooses to provide incidental services to collect and forward voluntary contributions from its solicitable class employees to the trade association's SSF must provide the same services upon request to the SSF of a labor organization representing any members working for the corporation or the corporation's subsidiaries, divisions, branches, or affiliates. In addition, the subsidiaries, divisions, branches, and affiliates of the corporate member must also provide the same incidental services upon request to the SSF of a labor organization representing any members working for the corporation or the corporation's subsidiaries, divisions, branches, or affiliates.

This result is also consistent with the Commission's application of the equal access provisions of 2 U.S.C. 441b(b)(6) to twice yearly solicitations. *See* 2 U.S.C. 441b(b)(4)(B); 11 CFR 114.6. In the context of twice yearly solicitations, if any corporate unit within a corporate family uses a method of facilitating the making of contributions to the corporation's SSF, then all units within that family must make the method available to a labor organization. *See, e.g.*, AO 1990–25 (a parent corporation that uses a method of facilitation for only certain subsidiaries must nonetheless ensure that the method is available to a labor organization, even at subsidiaries that do not themselves use the method of facilitation).

In addition to being compelled by the Act, there are strong policy reasons for making this change. The Petitioners and other commenters acknowledged that corporations that do not have their own SSF may rely exclusively on their trade associations' SSFs to serve as their proxy SSFs in representing their corporate interests in the political arena. In such circumstances, the Commission concludes that labor organizations should have the same rights that they would enjoy if the corporations had established their own SSFs.

Moreover, under the rule proposed in the NPRM, corporate families that employ most of their administrative and management personnel in one corporation, and most of their members of labor organizations in another corporation, could have effectively undermined the equal access rights of labor organizations, by providing incidental services to collect and forward solicitable class employee contributions to a trade association's SSF only within the corporation employing executive and administrative personnel and not in the corporation employing labor organization members. This outcome would be inconsistent with the careful balance struck by Congress and the Commission between corporate SSFs and labor organization SSFs. *See, e.g.*, 122 Cong. Rec. 3782 (daily ed. May 3, 1976) (Statement of Rep. Brademas, reprinted in Legislative History of the Federal Election Campaign Act Amendments of 1976 at 1082).

The Commission is also mindful that virtually all commenters indicated that payroll deductions are both easy to administer and common, and that this new rule requires any labor organization requesting access to such a method of facilitating contributions to reimburse the corporation for the expenses incurred.

(iv) Reimbursement by Labor Organizations

This final rule distinguishes between providing incidental services to collect and forward solicitable class employee contributions to a trade association's SSF on the one hand, and providing incidental services to collect and forward employee-member contributions to a labor organization's SSF on the other hand, with regard to the requirement for reimbursement by the recipient SSF. As noted above, ''incidental services by corporate members would not require reimbursement by the trade association since, in any event, reimbursement if required would come from membership dues paid to the trade association by its corporate members.'' AO 1979–8 (citation omitted); *see also* AO 1978–13. A labor organization or its SSF that receives incidental services from a corporate employer of members of the labor organization, by contrast, is required to reimburse the corporation for the cost of providing those services. *See* AOs 1981–39 and 1979–21. The Commission has previously concluded that a prohibited corporate contribution would result from a failure by a labor organization to reimburse a corporation for actual expenses incurred by the corporation in providing a payroll deduction or check-off system for contributions to the labor organization's SSF. *Id.*

2. 11 CFR 114.2—Prohibitions on Contributions and Expenditures

The Commission is making a conforming change to 11 CFR 114.2(f), which prohibits a corporation from facilitating the making of contributions to political committees, other than to the corporation's own SSF. The term ''facilitation'' means ''using corporate or labor organization resources or facilities to engage in fundraising activities in connection with any federal election.'' 11 CFR 114.2(f)(1). Facilitation does not include, however, enrollment by a corporation or labor organization of members of the corporation's or labor organization's restricted class in a payroll deduction plan or check-off system to make contributions to the corporation's or labor organization's SSF. *See* 11 CFR 114.2(f)(4)(i).

The Commission is adding a new paragraph (5) to 11 CFR 114.2(f), to specify that facilitation also does not include the provision of incidental services by a corporation to collect and forward voluntary contributions from its solicitable class employees to the SSF of a trade association of which the corporation is a member, pursuant to 11 CFR 114.8(e)(4), as revised. New 11 CFR 114.2(f)(5) expressly permits a corporation to collect these contributions through a payroll deduction or check-off system. The Commission did not receive any comments on this change, which was proposed in the NPRM.

Additionally, the Commission is revising the second sentence of paragraph (a) of 11 CFR 114.2 to correct two typographical errors. In the phrase that currently reads, ''* * * form making expenditures as defined in 11 FR 114.1(a) * * *,'' the Commission is changing the word ''form'' to ''from'' and is correcting the citation to ''11 CFR 114.1(a).'' Because these corrections are technical, they are not a substantive rule requiring notice and comment under the Administrative Procedure Act, 5 U.S.C. 553.

3. Other Issues

In response to the NPRM, one commenter asked the Commission also to change 11 CFR 114.7, to allow a corporation to provide incidental services to collect and forward contributions to a membership organization's SSF from employees who are members of the membership organization. The Commission has determined, however, that this proposal falls outside of the scope of this rulemaking.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the attached rules permit, but do not require, a corporation to provide incidental services to collect and forward contributions from its solicitable class employees to the separate segregated fund of a trade association of which the corporation is a member, including the use of a payroll deduction or check-off system. A corporation is currently permitted to collect and transmit contributions by other means to the SSF of a trade association of which the corporation is a member. The attached rules enable those corporations that wish to transmit employee contributions to trade association SSFs to do so more efficiently and use fewer resources.

List of Subjects in 11 CFR Part 114

Business and industry, Elections, Labor.

■ For the reasons set out in the preamble, subchapter A of chapter 1 of title 11 of the *Code of Federal Regulations* is amended as follows:

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 1. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), 441b.

■ 2. Section 114.2 is amended by revising the second sentence of paragraph (a) and by adding new paragraph (f)(5), to read as follows:

§ 114.2 Prohibitions on contributions and expenditures.

(a) * * *

National banks and corporations organized by authority of any law of Congress are prohibited from making expenditures as defined in 11 CFR 114.1(a) for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State, or Federal office.

* * * * *

(f) * * *

(5) Facilitating the making of contributions also does not include the provision of incidental services by a corporation to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including collection through a payroll deduction or check-off system, pursuant to 11 CFR 114.8(e)(4).

■ 3. In § 114.8, paragraph (e)(3) is revised, paragraph (e)(4) is redesignated as new paragraph (e)(5), and new paragraph (e)(4) is added to read as follows:

§ 114.8 Trade associations.

* * * * *

(e) * * *

(3) There is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use.

(4) A corporation may provide incidental services to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including a payroll deduction or check-off system, upon written request of the trade association. Any corporation that provides such incidental services, and the corporation's subsidiaries, branches, divisions, and affiliates, shall make those incidental services available to a labor organization representing any members working for the corporation or the corporation's subsidiaries, branches, divisions, or affiliates, upon written request of the labor organization and at a cost sufficient only to reimburse the corporation or the corporation's subsidiaries, branches, divisions, and affiliates, for the expenses incurred thereby.

* * * * *

Dated: July 14, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–14318 Filed 7–20–05; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20882; Directorate Identifier 2004–NM–241–AD; Amendment 39–14192; AD 2005–15–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas airplanes identified above. This AD requires repetitive functional tests for noisy or improper operation of the exterior emergency control handle assemblies of the mid, overwing, and aft passenger doors, and corrective actions if necessary. This AD also provides for optional terminating action for the repetitive tests. This AD is prompted by a report that the exterior emergency control mechanism handles were inoperative on a McDonnell Douglas Model MD–11 airplane. We are issuing this AD to prevent failure of the passenger doors to operate properly in an emergency condition, which could delay an emergency evacuation and possibly result in injury to passengers and flightcrew.

DATES: Effective August 25, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 25, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. That NPRM was published in the **Federal Register** on April 7, 2005 (70 FR 17618). That NPRM proposed to require repetitive functional tests for noisy or improper operation of the exterior emergency control handle assemblies of the mid, overwing, and aft passenger doors, and corrective actions if necessary. That NPRM also proposed to provide for optional terminating action for the repetitive tests.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Changes to This AD

We have changed the manufacturer name on the service bulletin citations in this AD from McDonnell Douglas to Boeing to reflect current guidelines established by the Office of the **Federal Register** for material incorporated by reference.

We have revised paragraph (f) of the final rule to include airplane model information for each of the service bulletins that was inadvertently left out of paragraph (f) of the proposed AD. It is necessary to identify which service bulletin affects which airplanes to eliminate any possible confusion.

We have made certain editorial changes to the proposed AD. These changes are minor in nature and do not have any effect on the technical content or proposed cost to the public of the final rule.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed, except as discussed under ''Changes to this AD.''

Costs of Compliance

There are about 633 airplanes of the affected design in the worldwide fleet. This AD will affect about 218 airplanes of U.S. registry. The following table provides the estimated costs, at an average labor rate of $65 per work hour, for U.S. operators to comply with this AD.

TEST AND MODIFICATION COSTS

Action	Work hours	Parts cost	Cost per airplane	Fleet cost
Functional test	1	N/A	$65 per test cycle	$14,170, per test cycle.
Replace bearings	6	$825	$1,215 per door, if required	N/A.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2005–15–03 McDonnell Douglas: Amendment 39–14192. Docket No. FAA–2005–20882; Directorate Identifier 2004–NM–241–AD.

Effective Date

(a) This AD becomes effective August 25, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to the airplanes identified in Table 1 of this AD; certificated in any category.

TABLE 1.—APPLICABILITY

McDonnell Douglas Airplane model—	As identified in—
DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes.	Boeing Service Bulletin DC10–52–219, Revision 1, dated September 3, 2004.
MD–11 and MD–11F airplanes	Boeing Service Bulletin MD11–52–044, Revision 1, dated September 3, 2004.

Unsafe Condition

(d) This AD was prompted by a report indicating that the exterior emergency control mechanism handles of the mid, overwing and aft passenger doors were inoperative on a McDonnell Douglas Model MD–11 airplane. We are issuing this AD to prevent failure of the passenger doors to operate properly in an emergency condition, which could delay an emergency evacuation and possibly result in injury to passengers and flightcrew.

Compliance: (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin MD11–52–044, Revision 1 (for Model MD–11 and MD–11F airplanes), and Service Bulletin DC10–52–219, Revision 1 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); both dated September 3, 2004; as applicable.

Functional Test

(g) Within 6,000 flight hours or 18 months after the effective date of this AD, whichever occurs later, perform a functional test of the exterior emergency control handle assemblies of the mid, overwing, and aft passenger doors; by doing all actions specified in the applicable service bulletin, except as provided by paragraph (i) of this AD.

(1) If the functional test reveals no noisy operation or binding: Repeat the functional test at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later, until the terminating action of paragraph (h) of this AD has been accomplished.

(2) If any functional test required by this AD reveals noisy operation or binding: Prior to further flight, replace the steel bearings with bearings made from corrosion-resistant material, in accordance with the applicable service bulletin.

Optional Terminating Action

(h) Accomplishment of the actions required by paragraph (g)(2) of this AD constitutes terminating action for the repetitive tests required by paragraph (g)(1) of this AD only for the modified doors.

Inoperable Doors

(i) Any mid, overwing, or aft passenger door that has been fastened shut and rendered inoperable according to an approved airplane freighter configuration is not subject to the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin DC10–52–219, Revision 1, dated September 3, 2004; or Boeing Service Bulletin MD11–52–044, Revision 1, dated September 3, 2004; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for copies of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on July 8, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14088 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20500; Directorate Identifier 2004–NM–235–AD; Amendment 39–14191; AD 2005–15–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111 Airplanes and Model A320–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) that applies to certain Airbus Model A320–111 airplanes and Model A320–200 series airplanes. This AD requires post-maintenance bleeding of accumulated air from, or ground functional testing of, the ram air turbine (RAT) system; modifying and reidentifying the airborne ground check module of the RAT system; and replacing the RAT reducer assembly if applicable. This AD is prompted by reports of unsuccessful in-flight RAT tests during which a deployed RAT failed to pressurize the blue hydraulic circuit of the RAT system. We are issuing this AD to prevent failure of the RAT during an in-flight emergency, which could lead to loss of hydraulic and electrical power and reduced controllability of the airplane.

DATES: This AD becomes effective August 25, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of August 25, 2005.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–20500; the directorate identifier for this docket is 2004–NM–235–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for Airbus Model A320 series airplanes. That action, published in the **Federal Register** on March 8, 2005 (70 FR 11170), proposed to require post-maintenance bleeding of accumulated air from, or ground functional testing of, the ram air turbine (RAT) system; modifying and reidentifying the airborne ground check module of the RAT system; and replacing the RAT reducer assembly if applicable.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

Support for the Proposed AD

One commenter supports the proposed AD.

Request To Revise Applicability

One commenter requests that we change a part number that was incorrectly referenced in the applicability of the proposed AD. The commenter states that part number (P/N) 760106 is incorrect and that it should be changed to P/N 769106.

We agree with this request. P/N 760106 is a part number that is not referenced by the Airbus service bulletin; it appeared due to a typographical error. We have corrected paragraph (c) of the final rule to read P/N 769106, as specified in the Airbus service bulletin and the French airworthiness directive.

Request To Revise Requirement for Bleeding of Blue Hydraulic Circuit

The same commenter requests that we revise the wording of paragraphs (f) and (g) of the proposed AD. The commenter asserts that the statement "after performing any maintenance on the blue hydraulic circuit" that appears in paragraphs (f) and (g) is too vague and can be taken as requiring unnecessary bleeding of the blue hydraulic circuit. The commenter suggests that we revise this wording to read "after performing any maintenance that would normally require bleeding of the blue hydraulic circuit (as instructed by the related AMM procedure)." The commenter states that such wording would eliminate any unneeded maintenance introduced by the proposed AD and still ensure that, during any in-flight emergency, a RAT system failure does not occur.

We agree with this request. We always seek to use unambiguous language and the specified statement could be taken as requiring unnecessary bleeding of the blue hydraulic circuit. Therefore, to ensure that bleeding of the blue hydraulic circuit must be performed only as a necessary part of a maintenance action, we have revised paragraphs (f) and (g) of the final rule to reflect the commenter's wording.

Explanation of Change to Applicability

The FAA has revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 130 airplanes of U.S. registry.

The system bleed/functional test will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the required actions for U.S. operators is $8,450, or $65 per airplane.

The airborne ground check module (AGCM) replacement will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will be supplied at no charge. Based on these figures, the estimated cost of this action for U.S. operators is $16,900, or $130 per airplane.

The reducer replacement, for subject airplanes, will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts will be supplied at no charge. Based on these figures, the estimated cost of this action for U.S. operators is $65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005–15–02 Airbus: Amendment 39–14191. Docket No. FAA–2005–20500; Directorate Identifier 2004–NM–235–AD.

Effective Date

(a) This AD becomes effective August 25, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Airbus Model A320–111 airplanes and Model A320–200 series airplanes, certificated in any category; equipped with Hamilton Sundstrand airborne ground check module (AGCM) having part number 769104, 769105, or 769106 installed; except those airplanes on which Airbus Modification 27189 has been done in production and on which Airbus Modification 28413 has not been done.

Unsafe Condition

(d) This AD was prompted by reports of unsuccessful in-flight ram air turbine (RAT) tests during which a deployed RAT failed to pressurize the blue hydraulic circuit of the RAT system. We are issuing this AD to prevent failure of the RAT system during an in-flight emergency, which could lead to loss of hydraulic and electrical power and reduced controllability of the airplane.

Compliance: (e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

RAT System Bleeding/Functional Test

(f) For airplanes on which maintenance has been performed on the blue hydraulic circuit as of the effective date of this AD: Within 3 days or 20 flight hours after the effective date of this AD, whichever occurs first, bleed accumulated air from, or perform a ground functional test of, the RAT system; by accomplishing all the actions specified in Airbus All Operators Telex (AOT) A320–29A1112, Revision 01, dated April 8, 2004. Thereafter, bleed the blue hydraulic circuit as specified in the AOT within 3 days or 20 flight hours after performing any maintenance that would normally require bleeding of the blue hydraulic circuit, (as instructed by the related aircraft maintenance manual (AMM) procedure).

(g) For airplanes on which maintenance has not been performed on the blue hydraulic circuit as of the effective date of this AD: Within 3 days or 20 flight hours after performing any maintenance that would normally require bleeding of the blue hydraulic circuit (as instructed by the related AMM procedure), bleed the blue hydraulic circuit by accomplishing all the actions specified in Airbus AOT A320–29A1112, Revision 01, dated April 8, 2004.

Replacement of AGCM and Reducer

(h) Within 35 months after the effective date of this AD, replace the AGCM with a modified and reidentified AGCM; and replace the reducer with a new reducer if applicable; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1111, dated June 29, 2004. Replacing the AGCM, and the reducer if applicable, ends the actions required by paragraphs (f) and (g) of this AD.

Note 1: Airbus Service Bulletin A320–29–1111 refers to Hamilton Sundstrand Service Bulletin ERPS13GCM–29–5, dated June 29, 2004, as an additional source of service information for modifying and reidentifying the AGCM.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) French airworthiness directive F–2004–150, dated September 1, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use All Operators Telex (Airbus) A320–29A1112, Revision 01, dated April 8, 2004; and Airbus Service Bulletin A320–29–1111, dated June 29, 2004; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 8, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14087 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21598; Directorate Identifier 2005–NM–121–AD; Amendment 39–14159; AD 2005–13–22]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on June 22, 2005 (70 FR 36011). The error resulted in an incomplete listing of the affected airplanes. This AD applies to all EMBRAER Model EMB–135 airplanes, and all Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This AD requires repetitive inspections of the electrical connectors of the electric fuel pumps to detect discrepancies, application of anti-corrosion spray, replacement of all fuel pumps with improved fuel pumps, repetitive inspections after all six fuel pumps are replaced, and applicable corrective actions.

DATES: Effective July 7, 2005.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Washington, DC. This docket number is FAA–2005–21598; the directorate identifier for this docket is 2005–NM–121–AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On June 15, 2005, the FAA issued AD 2005–13–22, amendment 39–14159 (70 FR 36011, June 22, 2005), for all EMBRAER Model EMB–135 airplanes, and all Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The AD requires repetitive inspections of the electrical connectors of the electric fuel pumps to detect discrepancies, application of anti-corrosion spray, replacement of all fuel pumps with improved fuel pumps, repetitive inspections after all six fuel pumps are replaced, and applicable corrective actions.

As published, the AD includes an incomplete applicability. Paragraph (c) of the AD omits Models EMB–145XR, –145MP, and –145EP airplanes, although those three models were included in all other references to the applicability throughout the preamble and regulatory language of the AD.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains July 7, 2005.

PART 39—[AMENDED]

§ 39.13 [Corrected]

■ In the **Federal Register** of June 22, 2005, on page 36012, in the 3rd column, paragraph (c) of AD 2005–13–22 is corrected to read as follows:

* * * * *

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes.

* * * * *

Issued in Renton, Washington, on July 11, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14169 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21103; Airspace Docket No. 05–AEA–10]

Amendment of Class E Airspace; Blairstown, NJ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Blairstown, NJ. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft operating into Blairstown Airport, Blairstown, NJ, under Instrument Flight Rules (IFR).

EFFECTIVE DATE: 0901 UTC October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace and Operations, ETSU–530, Eastern Terminal Service Unit, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On May 25, 2005, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Blairstown, NJ was published in the **Federal Register** (70FR 30034–30035). The proposed action would provide additional controlled airspace to accommodate Standard Instrument Approach Procedures (SIAP), based on area navigation (RNAV), to Blairstown Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before June 24, 2005. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting IFR operations with a 10-mile radius of Blairstown Airport, Blairstown, NJ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E Airspace Areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NJ E5 Blairstown, NJ (Revised)

Blairstown Airport, NJ

(Lat. 40°58′16″ N., long. 74°59′51″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Blairstown, Airport, excluding that airspace that coincides with the New York, NY, and East Stroudsburg, PA, Class E airspace areas.

* * * * *

Dated: July 12, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–14335 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21704; Airspace Docket No. 05–ACE–20]

Modification of Class E Airspace; Newton City-County Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at Newton City-County Airport, KS. A modification of the Airport Reference Point (AFP) necessitates the revision of the Class E airspace area extending upward from 700 feet above ground level (AGL) at Newton, KS to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the Rules Docket must be received on or before August 12, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21704/ Airspace Docket No. 05–ACE–20, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet AGL at Newton, KS. A modification of the Airport Reference Point (ARO) necessitates the revision of the Class E airspace area extending upward from 700 feet above ground level (AGL) at Newton, KS. The radius of the Class E airspace area is expanded from within a 6.7-mile radius to within a 6.8-mile radius of the airport. The extension of the Class E airspace area is changed from ''the 6.7-mile radius to 7.4 miles south of the airport'' to ''the 6.8-mile radius to 7.5 miles south of the airport.'' These modifications bring the legal descriptions of the Newton, KS Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C. Class E airspace areas extending upward form 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21704/Airspace Docket No. 05+ACE–20.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not at ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Newton City-County Airport, KS.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Newton, KS

Newton City-County Airport, KS
(Lat. 38°03′30″ N., long. 097°16′28″ W.)
Newton NDB, KS
(Lat. 38°03′51″ N., long. 097°16′24″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Newton City-County Airport and within 2.6 miles each side of the 185° bearing from the Newton NDB extending from the 6.8-mile radius to 7.5 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on July 12, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–14337 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21705; Airspace Docket No. 05–ACE–21]

Modification of Legal Description of the Class E Airspace; Columbia Regional Airport, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Columbia Regional Airport, MO, has revealed a discrepancy in the legal description of the Class E airspace area beginning at 700 feet above the surface. This action corrects that discrepancy by incorporating the coordinates of the Columbia Regional Airport ILS Localizer. Extensions to this Class E airspace area are described in relation to the Columbia Regional Airport ILS Localizer, therefore the coordinates for this facility must be included in the legal description to

bring the airspace area into compliance with FAA directives.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005. Comments for inclusion in the Rules Docket must be received on or before July 29, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21705/ Airspace Docket No. 05–ACE–21, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the legal description of Class E airspace beginning at 700 feet above the surface at Columbia Regional Airport, MO, to contain Instrument Flight Rule (IFR) operations in controlled airspace. The area is depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21705/Airspace Docket No. 05–ACE–21.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulaiton is within the scope of that authority since it contains aircraft executing instrument approach procedures to Columbia Regional Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Columbia, MO

Columbia Regional Airport, MO
(Lat. 38°49′05″ N., long. 92°13′11″ W.)
Columbia Regional Airport ILS Localizer
(Lat. 38°49′24″ N., long 92°12′53″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Columbia Regional Airport and within 2.5 miles each side of the Columbia Regional ILS localizer course extending from the 6.8-mile radius to 7.4 miles north of the airport and within 2.5 miles each side of the Columbia Regional ILS localizer course extending from the 6.8-mile radius to 7.4 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on July 12, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–14338 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 050707179–5179–01]

RIN 0694–AD28

Exports of Nuclear Grade Graphite: Change in Licensing Jurisdiction.

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security is publishing this final rule to make nuclear grade graphite intended for non-nuclear end uses subject to the Export Administration Regulations' licensing jurisdiction, and imposes a license requirement for exports and reexports to destinations of concern for nuclear proliferation reasons. The Nuclear Regulatory Commission (NRC) is discontinuing such jurisdiction in a corresponding final rule published in this same issue of the **Federal Register**. This transfer of jurisdiction and the imposition of license requirements only to destinations of concern for nuclear proliferation reasons are intended to remove the licensing burden on exporters of nuclear grade graphite intended for non-nuclear end uses to most destinations.

DATES: This rule is effective: July 21, 2005.

ADDRESSES: Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Jeff Lynch, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Jeffery Lynch in the Regulatory Policy Division at (202) 482–2440 regarding questions of a general nature; or Steven Clagett in the Nuclear and Missile Technology Controls Division at (202) 482–1641 regarding questions of a technical nature.

SUPPLEMENTARY INFORMATION:

Background

To date, the Nuclear Regulatory Commission (NRC) has controlled all exports of nuclear grade graphite under 10 CFR part 110, pursuant to section 109b of the Atomic Energy Act, which governs ''items or substances'' that are ''especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes,'' 42 U.S.C. 2139. Due to improvements in technology, most U.S. bulk, non-fabricated graphite is now nuclear grade—*i.e.*, has a purity level of less than 5 parts per million ''boron equivalent'' as measured according to American Society for Testing and Materials (ASTM) standard C–1233–98. The NRC has determined that the majority of nuclear grade graphite exports are intended for non-nuclear commercial end uses.

The widespread commercial uses of this graphite and the limited proliferation concerns except when it is destined for a nuclear reactor, led the supplier nations to limit their export controls on nuclear grade graphite only when intended ''for use in a nuclear reactor.'' This limitation appears in the definitions of controlled items used by the Nuclear Non-Proliferation Treaty (NPT) Exporters (Zangger) Committee and the Nuclear Suppliers Group (NSG) (International Atomic Energy Agency INFCIRC/209 and 254 respectively). The NRC has determined, in consultation with other agencies, that, consistent with these multilateral definitions of controlled items, exports of nuclear grade graphite intended for uses other than in a nuclear reactor are not significant from a nuclear proliferation perspective. This final rule is published in conjunction with a corresponding final rule published by NRC that revises 10 CFR part 110 and discontinues NRClicensing jurisdiction of nuclear grade graphite intended for non-nuclear uses. Although the NRC's final rule removes the density parameter from its definition of nuclear grade graphite, this final rule retains the density parameter for nuclear grade graphite for non-nuclear end use in conformance with the NSG's definition of ''nuclear grade graphite'' set forth in INFCIRC/254/Rev. 6/Part 1 of May 2003.

Specifically, this final rule revises Export Control Classification Number (ECCN) 0C005 on the Commerce Control List, which describes graphite that is subject to NRC jurisdiction, by removing the density parameter for nuclear grade graphite, so that nuclear grade graphite is defined only on the basis of its purity, consistent with the NRC definition in its corresponding rule. This final rule also revises ECCN 0C005 to reflect the NRC scope of jurisdiction for graphite intended for use in a nuclear reactor.

This final rule also adds a new ECCN 1C298 to control the export of nuclear grade graphite with a purity level of less than 5 parts per million ''boron equivalent'' and a density greater than 1.5 grams per cubic centimeter to countries indicated under NP column 2 on the Commerce Country Chart.

Finally, this final rule adds ''related controls'' notes to ECCNs 0C005, 1C107 and 1C298 to provide cross-references among all ECCNS that control any type of graphite. ECCN 1C107 controls graphite that meets certain density parameters for missile technology and antiterrorism reasons.

In light of NRC's discontinued jurisdiction over graphite exports not intended for nuclear end use, nuclear grade graphite that is not described in ECCNs 1C107 or 1C298 is classified as EAR99 when intended for a use other than in a nuclear reactor. However, such graphite may require a license for reasons specified elsewhere in the EAR, for example, the end-user/end-use restrictions described in Part 744 of the EAR or the restrictions described in Part 746 of the EAR.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 (3 CFR 2001 Comp., p. 783), as extended by **Federal Register** Notice of August 6, 2004 (69 FR 48763, August 10, 2004) continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves collections of information subject to the PRA. These collections have been approved by the Office of Management and Budget (OMB) under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit. This rule is anticipated to increase the number of licenses required but not to increase the range of total burden hours associated with this control number. Send

comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763, August 10, 2004.

■ 2. In Supplement No. 1 to part 774, Category 0, Nuclear Materials, Facilities and Equipment (And Misc. Items), ECCN 0C005 is revised to read as follows:

0C005 Graphite, having a purity level of less than 5 parts per million ''boron equivalent'' as measured according to ASTM standard C–1233–98 and intended for use in a nuclear reactor.

License Requirements

Reason for Control:

Control(s): Items described in 0C005 are subject to the export licensing authority of the Nuclear Regulatory Commission (see 10 CFR part 110).

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: N/A.

Related Controls: Graphite intended for a use other than in a nuclear reactor, and that meets certain density parameters, is classified under ECCN 1C107.High-purity graphite with a boron content of less than 5 parts per million and a density greater than 1.5 grams per cubic centimeter, is classified under ECCN 1C298.

Related Definitions: N/A

Items: The list of items controlled is contained in the ECCN heading.

■ 3. In Supplement No. 1 to part 774, Category 1, Materials, Chemicals, ''Microorganisms,'' and Toxins, ECCN 1C107 is revised to read as follows:

IC107 Graphite and ceramic materials, other than those controlled by 1C007, as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT

Control(s)	*Country chart*
MT applies to entire entry.	MT Column 1
AT applies to entire entry.	AT Column 1

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Kilograms.

Related Controls: (1) See also 0C005, 1C004, and 1C298. (2) For commodities that meet the definition of defense articles under 22 CFR 120.3 of the ITAR, see 22 CFR 121.16, Item 8-Category II of the International Traffic in Arms Regulations (ITAR), which describes similar commodities under the jurisdiction of the Department of State, Directorate of Defense Trade Controls.

Related Definitions: N/A.

Items: a. Fine grain recrystallized bulk graphites with a bulk density of 1.72 g/cm3 or greater, measured at 288 K (15° C), and having a particle size of 100 micrometers or less, usable for rocket nozzles and reentry vehicle nose tips as follows:

a.1. Cylinders having a diameter of 120 mm or greater and a length of 50 mm orgreater;

a.2. Tubes having an inner diameter of 65 mm or greater and a wall thickness of 25 mm or greater and a length of 50 mm or greater;

a.3. Blocks having a size of 120 mm × 120 mm × 50 mm or greater.

b. Pyrolytic or fibrous reinforced graphites, usable for rocket nozzles and reentry vehicle nose tips;

c. Ceramic composite materials (dielectric constant is less than 6 at any frequency from 100 MHz to 100 GHz), for use in ''missile'' radomes; and

d. Bulk machinable silicon-carbide reinforced unfired ceramic, usable for nose tips.

■ 4. In Supplement No. 1 to part 774, Category 1, Materials, Chemicals, ''Microorganisms,'' and Toxins, is amended by adding ECCN 1C298 immediately following ECCN 1C240.

1C298 Graphite with a boron content of less than 5 parts per million and a density greater than 1.5 grams per cubic centimeter that is intended for use other than in a nuclear reactor.

License Requirements

Reason for Control: NP.

Control(s)	*Country chart*
NP applies to entire entry.	NP Column 2

License Requirement Note: This entry does not control graphite intended for use in a nuclear reactor. Such graphite is subject to the export licensing authority of the Nuclear Regulatory Commission (see ECCN 0C005 and 10 CFR part 110).

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: N/A.

Related Controls: See also 1C107 and 0C005.

Related Definitions: For the purpose of this entry, graphite with a purity level better than 5 parts per million boron equivalent is determined according to ASTM standard C1233–98. In applying ASTM standard C1233–98, the boron equivalence of the element carbon is not included in the boron equivalence calculation, since carbon is not considered an impurity.

Items: The list of items controlled is contained in the ECCN heading.

Dated: July 14, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–14412 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AG18

Update to Divided State Retirement Systems Coverage Group List and Technical Coverage Corrections Required by the Social Security Protection Act of 2004

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are issuing these final rules to reflect in our regulations four self-implementing provisions in the Social Security Protection Act of 2004 (SSPA). One provision adds two States (Kentucky and Louisiana) to a list of States that are permitted to divide public employee retirement systems based on whether the State and/or local employees in positions under the systems want Social Security and/or Medicare coverage or not. The other three provisions make technical corrections to the Social Security Act (the Act) and the Internal Revenue Code (IRC) regarding various Social Security coverage issues.

DATES: These regulations are effective July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Cynthia Johnson, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7959 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office, *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

Background

Under section 218 of the Act, 42 U.S.C. 418, the Commissioner of Social Security has an agreement with each State allowing for the extension of Social Security coverage to services performed by individuals as State and local employees. Under section 218(d) of the Act, 42 U.S.C. 418(d), provisions of these agreements may extend coverage, on the basis of referendums provided for in that section, to services by employees participating in retirement systems (*i.e.*, State or local pension, annuity, retirement, and similar funds or systems), or to services by a subgroup of employees in such a system. See also 42 U.S.C. 418(a), (b)(4) and (b)(5); 20 CFR 404.1202, 404.1206 and 404.1214.

The SSPA, Public Law 108–203, was enacted on March 2, 2004. Section 416 of the law, effective January 1, 2003, amends section 218(d)(6)(C) of the Act by adding Louisiana and Kentucky to a list of States that are permitted to divide their public employee retirement systems based on the employees' desire for coverage. In the 23 ''divided retirement system'' States, the State has the option to extend Social Security and/or Medicare coverage by referendum to the affected services of only those employees, in a particular voting group of employees, who vote to be covered, with services of all future employees who join the group being covered automatically. Employees under a retirement system who participate in such a group referendum and do not wish their services to be covered under Social Security could vote to be (and are) excluded. (In other States, a majority vote in favor of Social Security coverage by a group of employees in a retirement system results in coverage of the affected services of all employees in the voting group.)

Section 422 of the SSPA, applicable to years beginning before, on or after December 31, 1994, conforms section 211(a)(7) of the Act, 42 U.S.C. 411(a)(7), to a corresponding provision of IRC, 26 U.S.C. 1402(a)(8), by excluding certain retirement income and benefits, received after retirement by duly ordained, commissioned, or licensed ministers or members of religious orders, from the definition of net earnings from self-employment.

Section 423 of the SSPA is effective upon enactment and clarifies that, for purposes of the definitions of wages in sections 209(a) of the Act and 3121(a) of the IRC, cash remuneration for domestic employment performed in a private home of the employer on a farm operated for profit is considered wages when it exceeds an applicable dollar threshold in section 3121(x) of the IRC, 26 U.S.C. 3121(x). See 42 U.S.C. 409(a)(6)(B); 42 U.S.C. 3121(a)(7)(B). Section 423 also amends section 210(f)(5) of the Act and section 3121(g)(5) of the IRC to clarify that domestic service in the private home of an employer on a farm operated for profit is not included within the definition of agricultural labor under those statutory sections.

Section 425 of the SSPA, also effective upon enactment, clarifies that, for purposes of the definitions of net earnings from self-employment under section 211(a)(5)(A) of the Act and section 1402(a)(5)(A) of the IRC, non-partnership income from a trade or business which is community income under the laws of a community property State is treated as the gross income and deductions of the spouse carrying on the relevant trade or business. If the spouses operate the trade or business jointly, such self-employment income is treated as the gross income and deductions of each spouse on the basis of his or her respective share of the gross income and deductions. We are revising our regulations as explained below to conform to the statutory changes.

Explanation of Changes

§§ 404.1055 and 404.1056

We are revising § 404.1055, per SSPA section 423, by deleting the last sentence of paragraph (a) which refers to domestic services performed on a farm. We are revising § 404.1056 by deleting all references to domestic employment in paragraph (a)(6). We are also fixing a typographical error in paragraph (a)(11) by correcting the spelling of ''commercial''.

§ 404.1086

We are revising § 404.1086, per SSPA section 425, by revising existing paragraph (a)(1) and removing paragraphs (a)(2) and (b). The paragraphs being removed discuss the meaning of ''management and control'' for a business (other than a partnership) operated by a husband and wife in a community property State and the treatment of partnership income derived in a community property State by a husband or wife who is a partner in a partnership or a husband and wife who are both partners in the same partnership, which are no longer applicable policies. The new language provides that the gross income and deductions derived from a trade or business in a community property State will be taxed and credited to the spouse who is carrying on the trade or business or to each spouse based on his or her distributive share of the gross income and deductions if the trade or business is jointly operated.

§ 404.1091

We are revising § 404.1091, per SSPA section 422, to provide that ministers and members of religious orders should exclude any parsonage or housing allowances included in retirement pay after the minister retires or any other retirement benefit received after retirement pursuant to a church plan as defined in section 414(e) of the IRC, when computing net earnings from self-employment. This provision is effective for years beginning before, on or after December 31, 1994. This technical correction in the SSPA conforms provisions in the Act to an IRC change made via section 1456(a) of Public Law 104–188. We are also fixing a typographical error in existing paragraph (c), which is being redesignated as paragraph (d), by removing the word ''one'' from the first sentence.

§ 404.1207

We are revising § 404.1207(a), per SSPA section 416, to include the States of Kentucky and Louisiana in the list of States that are permitted to divide public employee retirement systems based on whether the employees in positions under the systems want Social Security and/or Medicare coverage or not.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these final rules, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures on these rules because such procedures are unnecessary. Good cause exists because these regulations merely reflect the self-implementing provisions in sections 416, 422, 423 and 425 of Public Law 108–203 that we have been following operationally since enactment. Therefore, opportunity for prior comment is unnecessary, and we are issuing these regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). These revisions reflect the provisions enacted in the SSPA. However, without these changes, our rules will conflict with current law and may mislead the public. Therefore, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

Dated: April 15, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts K and M of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart K—[Amended]

■ 1. The authority citation for subpart K of part 404 is revised to read as follows:

Authority: Secs. 202(v), 205(a), 209, 210, 211, 229(a), 230, 231, and 702(a)(5) of the Social Security Act (42 U.S.C. 402(v), 405(a), 409, 410, 411, 429(a), 430, 431, and 902(a)(5)) and 48 U.S.C.1801.

■ 2. Section 404.1055 is amended by removing the last sentence of paragraph (a).

■ 3. Section 404.1056 is amended by revising paragraphs (a)(6) and (a)(11) to read as follows:

§ 404.1056 Explanation of agricultural labor.

(a) * * *

(6) If you do nonbusiness work, it is agricultural labor if you do the work on a farm operated for a profit. A farm is not operated for profit if the employer primarily uses it as a residence or for personal or family recreation or pleasure. (See § 404.1058(a) for an explanation of nonbusiness work.)

* * * * *

(11) Work connected with the commercial canning or freezing of a commodity is not agricultural labor nor is work done after the delivery of the commodity to a terminal market for distribution for consumption.

* * * * *

■ 4. Section 404.1086 is revised to read as follows:

§ 404.1086 Community income.

If community property laws apply to income that an individual derives from a trade or business (other than a trade or business carried on by a partnership), the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of his or her respective distributive share of the gross income and deductions.

■ 5. Section 404.1091 is amended by redesignating existing paragraph (c) as paragraph (d), adding a new paragraph (c) and removing the word ''one'' from the first sentence of the redesignated paragraph (d) to read as follows:

§ 404.1091 Figuring net earnings for ministers and members of religious orders.

* * * * *

(c) *Housing allowance when included in retirement pay.* You must exclude any parsonage or housing allowance included in your retirement pay or any other retirement benefit received after retirement pursuant to a church plan as defined in section 414(e) of the Internal Revenue Code when computing your net earnings from self-employment. For example, if a minister retires from Church A and the rental value of a parsonage or any other allowance is included in his/her retirement pay, the parsonage allowance must be excluded when determining net earnings from self-employment. However, if this same retired minister goes to work for Church B and is paid a parsonage allowance by Church B, this new income must be included when computing net earnings from self-employment.

* * * * *

Subpart M—[Amended]

■ 6. The authority citation for subpart M of part 404 continues to read as follows:

Authority: Secs. 205, 210, 218, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418, and 902(a)(5)); sec. 12110, Pub. L. 99–272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99–509, 100 Stat. 1970.

■ 7. Section 404.1207 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 404.1207 Divided retirement system coverage groups.

(a) *General.* * * * The States having this authority are Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Kentucky, Louisiana, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin.

* * * * *

[FR Doc. 05–14385 Filed 7–20–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 2004N–0214]

Public Information Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its public information regulations to implement more comprehensively the exemptions contained in the Freedom of Information Act (FOIA). This action incorporates exemptions one, two, and three of the FOIA into FDA's public information regulations. Exemption one applies to information that is classified in the interest of national defense or foreign policy. Exemption two applies to records that are related solely to an agency's internal personnel rules and practices. Exemption three incorporates the various nondisclosure provisions that are contained in other Federal statutes.

DATES: The rule is effective August 22, 2005.

FOR FURTHER INFORMATION CONTACT: Betty B. Dorsey, Division of Freedom of Information (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6567.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is amending its public information regulations to incorporate exemptions one, two, and three of the FOIA (5 U.S.C. 552). The FOIA provides that all Federal agency records shall be made available to the public upon request, except to the extent those records are protected from public disclosure by one of nine exemptions (5 U.S.C. 552(b)) or one of three special law enforcement record exclusions (5 U.S.C. 552(c)). FDA originally issued its public information regulations implementing the FOIA in 1974 (39 FR 44602, December 24, 1974). As noted at the time, FDA's 1974 regulations explicitly addressed four of the nine FOIA exemptions— those that were then perceived to be of particular importance to the agency and those relating to trade secrets, internal memoranda, personal privacy, and investigatory files (39 FR 44602). FDA now finds it necessary to address exemption one (5 U.S.C. 552(b)(1)), given the President's designation of the Secretary of Health and Human Services to classify information under Executive Order 12958 (66 FR 64347, December 12, 2001). Because exemption two (5 U.S.C. 552(b)(2)) applies to, among other types of records, internal matters whose disclosure would risk circumvention of a legal requirement, this exemption is of fundamental importance to homeland security in light of recent terrorism events and heightened security awareness. In addition, FDA now finds that exemption three (5 U.S.C. 552(b)(3)), which incorporates the various nondisclosure provisions that are contained in other Federal statutes, is becoming increasingly relevant to the agency.

In the **Federal Register** of September 2, 2004, we published a direct final rule (69 FR 53615) to revise subpart D of FDA's public information regulations in part 20 (21 CFR part 20) to incorporate these three exemptions. In the same issue of the **Federal Register**, we published a companion proposed rule (69 FR 53662) to provide a procedural framework in which the rule could be finalized in the event we received any significant adverse comments regarding the direct final rule. We withdrew the direct final rule.

We received significant adverse comment on the direct final rule. Accordingly, we published a document in the **Federal Register** of January 18, 2005 (70 FR 2799), withdrawing the direct final rule. We applied the comments regarding the withdrawn direct final rule to the companion proposed rule and considered them in developing this final rule.

In addition to the changes in the proposed rule, this document also clarifies and updates § 20.82(b)(3). While this regulation had previously listed specific statutory provisions that prohibit public disclosure, this list was incomplete (e.g., it did not reference the Ethics in Government Act (5 U.S.C. app. 107(a)(2))) and was out-of-date (e.g, it listed 42 U.S.C. 263i, which is now codified at 21 U.S.C. 360nn). The amendment replaces this list of statutory provisions with a statement that FDA will not make available for public disclosure information that is prohibited from public disclosure under statute.

II. Comments on the Proposed Rule

This section discusses the two comments we received.

Issue 1: One comment suggested adding a statement that a request for records should not be denied without good cause.

Our Response: FDA is not adopting this comment because it is not necessary. Under the FOIA, an agency may not withhold a record or a portion of a record unless it falls within an FOIA exemption or exclusion. These exemptions and exclusions, including the three exemptions in the proposed rule, reflect the balance under the FOIA between providing the public with access to Government documents and the need of the Government to keep information in confidence. See, for example, *John Doe Agency* v. *John Doe Corp.*, 493 U.S. 146, 152–53 (1989)). Thus, if a record or portion of a record falls within an FOIA exemption, this in and of itself indicates that the Government has good cause for withholding it. Even when an exemption applies, however, FDA's regulations state that the agency will nonetheless make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the interests of persons in trade secrets and confidential commercial or financial information, and the need for the agency to promote frank internal policy deliberations and to pursue its regulatory activities without disruption (§§ 20.20(a) and 20.82(a)).

Issue 2: The second comment stated that the proposed amendments to FDA's public information regulations were unnecessarily restrictive. It went on to suggest several changes to them. Regarding proposed § 20.65 (the exemption relating to national defense and foreign policy materials), the comment suggested that the scope of FDA's implementing regulation not include material relating to foreign policy, on the basis that public health issues should trump any foreign policy concerns. It also recommended adding the following several qualifications to the proposed regulation: (1) Any withholding must not directly conflict with any statute or judicial mandate, (2) the Executive order under which the records are classified must be constitutionally valid, and (3) the Executive order must specifically address activities of the Department of Health and Human Services (HHS).

Our Response: FDA is not adopting these comments. FDA's implementation of this exemption is consistent with exemption one of the FOIA, essentially tracking that language verbatim. It is likewise consistent with HHS' exemption one regulation (45 CFR 5.62) and the exemption one regulations issued by other agencies. FDA does not believe there is a valid need for its implementation of exemption one of the FOIA to be substantially different from exemption one of the FOIA or for its implementation to be substantially different from other agencies' implementation of the exemption. Therefore, FDA does not agree that the suggested changes are warranted.

Issue 3: Regarding proposed § 20.66 (the exemption for internal personnel rules and practices), the second comment suggested not withholding such materials from a person who is or was subject to such personnel rules and practices. The comment also suggested deleting the statement in the proposed regulation that the agency may withhold internal records whose release would help some persons circumvent the law, asserting that this language is so vague it would apply to all FDA information.

Our Response: As with all of the exemptions in FDA's public information regulations, this exemption would not apply to sharing information with current FDA employees. Therefore, a statement about employee access to FDA's internal personnel rules and practices would be unnecessary. FDA has routinely distributed this type of information to its employees through a variety of mechanisms and will continue to do so. Likewise, adding such a statement to the exemption might be confusing because it could imply that the exemptions listed in part 20 apply to sharing information with FDA employees. Regarding former employees, whether or not a particular FOIA exemption applies to a record does not depend on the identity of the person requesting the record or the nature of the person's interest in the record. See, for example, *United States Dep't of Justice* v. *Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 771 (1989). Former employees, therefore, have the same access to information under the FOIA as any other member of the public.

FDA does not agree that it should delete the statement about withholding material that would help some persons circumvent the law. This statement is consistent with exemption two of the FOIA. For example, in describing this exemption, the D.C. Court of Appeals stated that ''predominantly internal documents the disclosure of which would risk circumvention of agency statutes and regulations are protected by the so-called 'high 2' exemption.'' (*Schiller* v. *NLRB*, 964 F.2d 1205, 1207 (D.C. Cir. 1992)). The statement is also consistent with the HHS' exemption two regulation (45 CFR 5.63). For these reasons, FDA is not adopting these comments.

Issue 4: Proposed § 20.67 stated that:

Records or information may be withheld from public disclosure if a statute specifically allows the Food and Drug Administration (FDA) to withhold them. FDA may use another statute to justify withholding records and information only if it absolutely prohibits disclosure, sets forth criteria to guide our decision on releasing material, or identifies particular types of matters to be withheld.

The second comment suggested having this exemption apply only if the statute specifically requires FDA to withhold the records and only if the statute absolutely prohibits disclosure.

Our Response: FDA is not adopting this comment. FDA believes it is appropriate to consider withholding material from public release when a statute identifies particular types of information to be withheld and when a statute sets forth criteria to guide FDA's decision on releasing and withholding material, regardless of whether the statute specifically requires FDA to withhold the material. FDA's implementation of this exemption is consistent with FOIA exemption three, HHS' exemption three regulation (45 CFR 5.64), and other agencies' exemption three regulations.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this final rule simply incorporates three existing FOIA exemptions, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

VI. Paperwork Reduction Act of 1995

The final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 2. Section 20.65 is added to read as follows:

§ 20.65 National defense and foreign policy.

(a) Records or information may be withheld from public disclosure if they are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(2) In fact properly classified under such Executive order.

(b) [Reserved]

■ 3. Section 20.66 is added to read as follows:

§ 20.66 Internal personnel rules and practices.

Records or information may be withheld from public disclosure if they are related solely to the internal personnel rules and practices of the Food and Drug Administration (FDA). Under this exemption, FDA may withhold records or information about routine internal agency practices and procedures. Under this exemption, the agency may also withhold internal records whose release would help some persons circumvent the law.

■ 4. Section 20.67 is added to read as follows:

§ 20.67 Records exempted by other statutes.

Records or information may be withheld from public disclosure if a statute specifically allows the Food and Drug Administration (FDA) to withhold them. FDA may use another statute to justify withholding records and information only if it absolutely prohibits disclosure, sets forth criteria to guide our decision on releasing material, or identifies particular types of matters to be withheld.

■ 5. Section 20.82 is amended by revising paragraph (b)(3) to read as follows:

§ 20.82 Discretionary disclosure by the Commissioner.

* * * * *

(b) * * *

(3) Prohibited from public disclosure under statute.

* * * * *

Dated: July 13, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–14320 Filed 7–20–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

Change of Address; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to correct an incorrect address for the Center for Food Safety and Applied Nutrition (CFSAN). This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

DATES: This rule is effective July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in § 101.83 (21 CFR 101.83) to reflect the correct address for CFSAN.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

§ 101.83 [Amended]

■ 2. Section 101.83 is amended in paragraph (c)(2)(ii)(*A*)(*2*) by removing ''200 C St. SW., rm. 2831, Washington, DC 20204'' and by adding in its place ''5100 Paint Branch Pkwy., College Park, MD 20740'' and in paragraph (c)(2)(ii)(*B*)(*2*)by removing ''200 C St., SW., rm. 2831, Washington, DC 20204'' and ''200 C St., SW., Washington DC'' and by adding in their place ''5100 Paint Branch Pkwy., College Park, MD 20740''.

Dated: July 14, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–14328 Filed 7–20–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Roxarsone; Semduramycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is correcting the single-ingredient roxarsone Type A medicated article that may be used to formulate three-way, combination drug Type C medicated broiler chicken feeds containing semduramicin, virginiamycin, and roxarsone under a new animal drug application (NADA) recently approved for Phibro Animal Health. FDA is also amending the animal drug regulations to reflect two roxarsone Type A medicated articles

approved under separate new animal drug applications (NADAs) for different conditions of use. This action is being taken to improve the accuracy of the agency's regulations.

DATES: This rule is effective July 21, 2005.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: *ghaibel@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: FDA has found that the list of approved, single-ingredient Type A medicated articles used to formulate three-way, combination drug Type C medicated broiler chicken feeds containing semduramicin, virginiamycin, and roxarsone under NADA 141–226 is in error. The **Federal Register** document that described approval of that application for Phibro Animal Health on February 23, 2004 (69 FR 13221, March 22, 2004), listed 3–NITRO (roxarsone) Type A Medicated article as the source of roxarsone; however, the correct source for this combination feed is ROXARSONE (roxarsone) Type A Medicated article, approved under NADA 92–953. At this time, FDA is amending the regulations in 21 CFR 558.555 to reflect the roxarsone Type A medicated article approved for this combination and a current tabular format.

In addition, FDA has found that the April 1, 2004, edition of parts 500 to 599 (21 CFR parts 500 to 599) of Title 21 of the Code of Federal Regulations (CFR) does not accurately reflect the approved conditions of use for roxarsone Type A medicated articles. Roxarsone is approved as single-ingredient Type A medicated articles under two separate applications, NADA 7–891 for 3–NITRO and NADA 92–953 for ROXARSONE, held by Alpharma, Inc. In error, portions of the regulation describing approvals had been consolidated in July 2000 (65 FR 45711, July 25, 2000). At this time, FDA is amending the regulations in § 558.530 to reflect two separate approvals for roxarsone Type A medicated articles with different approved conditions of use and a current tabular format.

Also, FDA has found that the approved conditions of use codified for NADA 92–953 prior to the July 2000 change were in error. A specific technical amendment to remove turkeys as an approved species (49 FR 30927, August 2, 1984) was reversed in a subsequent change that implemented revised terminology for feed premixes (51 FR 7400, March 3, 1986). At this time, FDA is amending the regulations in § 558.530 to reflect approval of NADA 92–953 for chickens only.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.530 is amended by revising paragraphs (a) through (d)(3); removing paragraph (d)(4); and by redesignating paragraph (d)(5) as paragraph (d)(4) to read as follows:

§ 558.530 Roxarsone.

(a) *Specifications*. Type A medicated articles containing 10, 20, 50, or 80 percent roxarsone.

(b) *Approvals*. See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 046573 for use of 10, 20, and 50 percent Type A medicated articles as in paragraph (d)(1)(i) of this section.

(2) No. 046573 for use of 10, 20, 50, and 80 percent Type A medicated articles as in paragraphs (d)(1) through (d)(3) of this section.

(c) *Related tolerances*. See § 556.60 of this chapter.

(d) *Conditions of use*—(1) *Chickens*. It is used in chicken feed as follows:

Roxarsone in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsor
(i) 22.7 to 45.4		Growing chickens: For increased rate of weight gain, improved feed efficiency, and improved pigmentation.	Feed continuously throughout growing period; do not feed to chickens producing eggs for human consumption; withdraw 5 days before slaughter; as sole source of organic arsenic; drug overdose or lack of water may result in leg weakness.	046573
(ii) 22.7 to 45.4	Chlortetracycline 10 to 50	Growing chickens: As in paragraph (d)(1)(i) of this section.	As in paragraph (d)(1)(i) of this section. Chlortetracycline as provided by No. 046573 in § 510.600(c) of this chapter.	
(iii) 22.7 to 45.4	Chlortetracycline 100 to 200	Growing chickens: As in paragraph (d)(1)(i) of this section; and for control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	As in paragraph (d)(1)(i) of this section except feed continuously for 7 to 14 days. Chlortetracycline as provided by No. 046573 in § 510.600(c) of this chapter.	

Roxarsone in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsor
(iv) 22.7 to 45.4	Chlortetracycline 200 to 400	Growing chickens: As in paragraph (d)(1)(i) of this section; and for control of chronic respiratory disease (CRD) and air sac infection caused by *M. gallisepticum* and *Escherichia coli* susceptible to chlortetracycline.	As in paragraph (d)(1)(i) of this section except feed continuously for 7 to 14 days. Chlortetracycline as provided by No. 046573 in § 510.600(c) of this chapter.	
(v) 22.7 to 45.4	Chlortetracycline 500	Growing chickens: As in paragraph (d)(1)(i) of this section; and for reduction of mortality due to *E. coli* infections susceptible to chlortetracycline.	As in paragraph (d)(1)(i) of this section except feed continuously for 5 days. Chlortetracycline as provided by No. 046573 in § 510.600(c) of this chapter.	

(2) *Turkeys*. It is used in turkey feed as follows:

Roxarsone in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsor
(i) 22.7 to 45.4		Growing turkeys: For increased rate of weight gain, improved feed efficiency, and improved pigmentation.	Feed continuously throughout growing period; do not feed to turkeys producing eggs for human consumption; withdraw 5 days before slaughter; as sole source of organic arsenic; drug overdose or lack of water may result in leg weakness.	046573
(ii) 22.7 to 45.4	Chlortetracycline 10 to 50	Growing turkeys: As in paragraph (d)(2)(i) of this section.	As in paragraph (d)(2)(i) of this section. Chlortetracycline as provided by No. 046573 in § 510.600(c) of this chapter.	
(iii) 22.7 to 45.4	Chlortetracycline 200	Growing turkeys: As in paragraph (d)(2)(i) of this section; and for control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	As in paragraph (d)(2)(i) of this section except feed continuously for 7 to 14 days. Chlortetracycline as provided by No. 046573 in § 510.600(c) of this chapter.	
(iv) 22.7 to 45.4	Chlortetracycline 400	1. Growing turkeys: As in paragraph (d)(2)(i) of this section; and for control of hexamitiasis caused by *Hexamita meleagrides* susceptible to chlortetracycline. 2. Turkey poults not over 4 weeks of age: Reduction of mortality due to paratyphoid caused by *Salmonella typhimurium* susceptible to chlortetracycline.	As in paragraph (d)(2)(i) of this section except feed continuously for 7 to 14 days. Chlortetracycline as provided by No. 046573 in § 510.600(c) of this chapter.	
(v) 22.7 to 45.4	Chlortetracycline 25 mg/lb body weight daily	Growing turkeys: As in paragraph (d)(2)(i) of this section; and for control of complicating bacterial organisms associated with bluecomb (transmissible enteritis, coronaviral enteritis) susceptible to chlortetracycline.	As in paragraph (d)(2)(i) of this section except feed continuously for 7 to 14 days. Chlortetracycline as provided by No. 046573 in § 510.600(c) of this chapter.	

(3) *Swine*. It is used in swine feed as follows:

Roxarsone in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsor
(i) 22.7 to 34.1		Growing and finishing swine: For increased rate of weight gain and improved feed efficiency.	Feed continuously throughout growing period; withdraw 5 days before slaughter; as sole source of organic arsenic.	046573
(ii) 22.7 to 34.1	Chlortetracycline 400 (to administer 10 mg/lb body weight)	Growing and finishing swine: As in paragraph (d)(3)(i) of this section; and for treatment of bacterial enteritis caused by *E. coli* and *S. choleraesuis* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to chlortetracycline.	Feed for not more than 14 days; withdraw 5 days before slaughter; as sole source of organic arsenic.	
(iii) 181.5		Growing and finishing swine: For the treatment of swine dysentery.	Feed for not more than 6 consecutive days; if improvement is not observed, consult a veterinarian; withdraw 5 days before slaughter; as a sole source of organic arsenic; animals must consume enough medicated feed to provide a therapeutic dose.	046573
(iv) 181.5	Chlortetracycline 10 to 50	Growing and finishing swine: As in paragraph (d)(3)(i) of this section; and for treatment of swine dysentery.	Feed for not more than 6 consecutive days; if improvement is not observed, consult a veterinarian; withdraw 5 days before slaughter; as a sole source of organic arsenic; animals must consume enough medicated feed to provide a therapeutic dose.	
(v) 181.5	Chlortetracycline 400 (to administer 10 mg/lb body weight)	Growing and finishing swine: As in paragraph (d)(3)(iii) of this section; and for treatment of bacterial enteritis caused by *E. coli* and *S. choleraesuis* and bacterial pneumonia caused by *P. multocida* susceptible to chlortetracycline.	Feed for not more than 6 consecutive days; if improvement is not observed, consult a veterinarian; withdraw 5 days before slaughter; as a sole source of organic arsenic; animals must consume enough medicated feed to provide a therapeutic dose.	

* * * * *

■ 3. Section 558.555 is amended by revising paragraph (d) to read as follows:

§ 558.555 Semduramicin.

* * * * *

(d) *Conditions of use in chickens*. It is used in chicken feed as follows:

Semduramicin in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsor
(1) 22.7 (25 ppm)		Broiler chickens: For the prevention of coccidiosis caused by *Eimeria acervulina*, *E. brunetti*, *E. maxima*, *E. mivati*/*E. mitis*, *E. necatrix*, and *E. tenella*.	Do not feed to laying hens.	066104
(2) 22.7	Bacitracin methylene disalicylate 10 to 50	Broiler chickens: As in paragraph (d)(1) of this section; for improved feed efficiency.	Feed continuously as sole ration. Do not feed to laying hens. Bacitracin methylene disalicylate as provided by No. 046573 in § 510.600(c) of this chapter.	066104

Semduramicin in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsor
(3) 22.7	Bacitracin methylene disalicylate 10 to 50 plus roxarsone 45.4	Broiler chickens: As in paragraph (d)(4) of this section; for improved feed efficiency.	Feed continuously as sole ration. Use feed within 2 weeks of production. Do not feed to laying hens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdosage or lack of water intake may result in leg weakness or paralysis. Withdraw 5 days before slaughter. Bacitracin methylene disalicylate and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.	066104
(4) 22.7	Roxarsone 45.4	Broiler chickens: For the prevention of coccidiosis caused by *Eimeria acervulina*, *E. brunetti*, *E. maxima*, *E. mivati*/*E. mitis*, *E. necatrix*, and *E. tenella*, including some field strains of *E. tenella* that are more susceptible to semduramicin combined with roxarsone than semduramicin alone.	Feed continuously as sole ration. For broiler chickens only. Do not feed to laying hens. Use as sole source of organic arsenic. Withdraw 5 days before slaughter. Roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.	066104
(5) 22.7	Virginiamycin 5	Broiler chickens: As in paragraph (d)(1) of this section; for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Do not feed to laying hens. Virginiamycin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(6) 22.7	Virginiamycin 5 to 15	Broiler chickens: As in paragraph (d)(1) of this section; for increased rate of weight gain.	Feed continuously as sole ration. Do not feed to laying hens. Virginiamycin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(7) 22.7	Virginiamycin 20	Broiler chickens: As in paragraph (d)(1) of this section; for prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin.	Feed continuously as sole ration. Do not feed to laying hens. Virginiamycin as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(8) 22.7	Virginiamycin 20 plus roxarsone 22.7 to 45.4	Broiler chickens: As in paragraph (d)(1) of this section; for prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin; for increased rate of weight gain and improved feed efficiency; and for improved pigmentation.	Feed continuously as sole ration throughout growing period. Do not feed to laying hens. Use as sole source of organic arsenic. Poultry should have access to drinking water at all times. Drug overdose or lack of water may result in leg weakness. Roxarsone as in § 558.530(b)(1) of this chapter provided by No. 046573 in § 510.600(c) of this chapter; semduramicin and virginiamycin as provided by No. 066104.	066104

Dated: April 25, 2005.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation.

[FR Doc. 05–14329 Filed 7–20–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 124

RIN 1076–AE74

Deposit of Proceeds From Lands Withdrawn for Native Selection; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to a final rule that was published Thursday, July 14, 2005 (70 FR 40660). The regulation relates to Deposit of Proceeds from Lands Withdrawn for Native Selection.

EFFECTIVE DATE: July 14, 2005.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Office of Trust Regulations, Policies and Procedures, by telephone at (505) 816–1086, or by facsimile transmission at (505) 816–1377.

SUPPLEMENTARY INFORMATION: This rule is published by the authority of the Secretary, granted under 43 U.S.C. 1601 *et seq.* and 25 U.S.C. 4001 *et seq.*, and delegated to the Assistant Secretary—Indian Affairs 209 DM 8.1.

Background

The final rule provides contact information to be used by all Departments and Agencies, the State of Alaska, and any other interested parties for deposit of proceeds from lands withdrawn for native selection. This rule was published by the Assistant Secretary—Indian Affairs in consultation with the Special Trustee for American Indians under the provisions of the American Indian Trust Fund Management Reform Act of 1994.

Need for Correction

As published, the final rule was introduced by words of issuance that do not satisfy Office of the Federal Register standards. The language must be corrected to allow for correct codification of the revised regulation.

Correction of Publication

Accordingly, the publication on July 14, 2005, of the final rule that was the subject of FR Doc. 05–13891, is corrected as follows:

On page 40660, in the second column, immediately following the name and title of the document's signer, in the words of issuance, the word ''amended'' is corrected read ''revised.''

Dated: July 15, 2005.

James E. Cason,

Associate Deputy Secretary of the Interior.

[FR Doc. 05–14437 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–2W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket # ID–03–003; FRL–7941–7]

Approval and Promulgation of Air Quality Implementation Plan; Idaho; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the preamble to a final rule published in the **Federal Register** of July 11, 2005 (70 FR 39658) regarding revisions to the open burning regulations in Idaho's State Implementation Plan. This notice clarifies that, under section 307(b)(1) of the Clean Air Act, any petition for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date notice of approval appeared in the **Federal Register**, and not 30 days, as erroneously stated in July 11, 2005 action.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, (206) 553–6706.

SUPPLEMENTARY INFORMATION:

Correction

In the final rule, beginning on page 39658 in the issue of July 11, 2005, make the following correction, in the **SUPPLEMENTARY INFORMATION** section. On page 39661 in the 3rd column, remove ''August 10, 2005'' in the first paragraph and replace it with ''September 9, 2005''.

Dated: July 14, 2005.

Michelle Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 05–14399 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–NM–0001; FRL–7942–5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes our approval of the State Implementation Plan (SIP) revisions submitted by the Governor of New Mexico on September 7, 2004. The submittal revises the second ten-year carbon monoxide (CO) maintenance plan for the Albuquerque/Bernalillo County, New Mexico area. The submittal also revises the relevant parts of the New Mexico Administrative Code (NMAC) including revisions to the General Provisions, Inspection and Maintenance (I&M) Program, and the contingency measures. We are finalizing approval of these revisions in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on August 22, 2005.

ADDRESSES: The EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID No. R06–OAR–2005–NM–0001. All documents in the docket are listed in the RME index at *http://docket.epa.gov/rmepub/,* once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

The City of Albuquerque, Environmental Health Department, One Civic Plaza, Albuquerque, NM 87102.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar of the Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6691, *shar.alan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

In this document "we," "us," and "our" refer to EPA.

I. Background Information

1. What Actions Are We Taking in This Document?

On April 14, 2005 (70 FR 19723) we proposed approval of revisions to the New Mexico SIP pertaining to the second ten-year CO maintenance plan for the Albuquerque/Bernalillo County, New Mexico area and its relevant parts of the NMAC including revisions to the General Provisions, I&M Program, the Oxygenated Fuels Program, and the contingency measures. In the April 14, 2005 **Federal Register** (70 FR 19723), we stated that written comment must be received by May 16, 2005. We received written adverse comments during the public comment period.

On June 8, 2005 (70 FR 33363) we published the withdrawal of the direct final rule 70 FR 19702 due to the adverse comments received. A detailed rationale for our action is set forth in the direct final rule. See 70 FR 19702, and the Technical Support Document for further information. In the June 8, 2005, **Federal Register** (70 FR 33363) as well as the April 14, 2005 direct final rule we stated that we will summarize and respond to written comments received, and take final rulemaking action on the requested New Mexico SIP revision. In the June 8, 2005, **Federal Register** (70 FR 33363), we cited two references as "71 FR 19723" and "71 FR 19702" by mistake. The correct citations for those two references should have read "70 FR 19723" and "70 FR 19702" instead. Today, we are correcting that error.

Today, we are also summarizing and responding to written comments received and taking final rulemaking action on the April 14, 2005 (70 FR 19723) proposal pertaining to the Albuquerque/Bernalillo County, New Mexico SIP revision. See sections 2 and 3 of this document for more information.

2. Who Submitted Comments to Us?

We received written comments on the April 14, 2005 (70 FR 19723), proposed New Mexico SIP revision. The comments were submitted by Chevron and ConocoPhilips (the Commenters) during the public comment period.

3. What Is Our Response to the Submitted Written Comments?

Our responses to the written comments concerning the April 14, 2005 (70 FR 19723) proposal, New Mexico SIP revision are as follows:

Comment #1: Chevron and ConocoPhillips (the Commenters) expressed their opposition to maintaining the 2.7 percent oxygenated fuel content requirement, for the period from November 1st through the end of February (Winter season) as a part of the second ten-year CO limited maintenance plan, within the Albuquerque/Bernalillo County, New Mexico area. Chevron submitted a chart indicating the downward trend of calculated CO concentrations in the area for the recent years to substantiate its position.

Response to Comment #1: The Act assigns to the states initial and primary responsibility for formulating a plan to achieve the NAAQS. It is up to the state to prepare state implementation plans which contain specific pollution control measures. An examination of this SIP submittal reveals no record of the Commenters having provided input or submitted comments to the State or the Albuquerque Environmental Health Department (AEHD) during their rulemaking process. The EPA's responsibilities under the Act are qualitatively different from those of the state agency. The EPA is charged with reviewing and approving or disapproving the enforceable implementation plans prepared by states and other political subdivisions identified in the statute. It is not EPA's role to disapprove the State's choice of control strategies if that strategy will result in attainment or continued maintenance of the NAAQS, and meets all other applicable statutory requirements. *See Union Electric* v. *EPA,* 427 U.S. 246 (1976); *Train* v. *NRDC* 421 U.S 60 (1975). The EPA's role in reviewing SIP submittals is to approve state choices, provided that they meet the criteria of the Act. Federal inquiry into the reasonableness of state action is not allowed under the Act (*see, Union Electric Co.* v. *EPA,* 427 U.S. 246, 255–266 (1976); 42 U.S.C. 7410(a)(2)). Under section 116 of the Act, with certain exceptions not relevant here, a State retains the right to adopt and enforce any requirement respecting control or abatement of air pollution, including more stringent emissions standards and limitations. The State has submitted information indicating that the administrative requirements of New Mexico law have been met. We can agree with the Commenters' statement that all CO emissions in the Albuquerque/Bernalillo County are not from mobile sources. However, the CO emissions inventory Table I of the April 14, 2005 (70 FR 19702) direct final rule indicates that more than 84% (398.14/473.34) of the CO emissions in the area are mobile source related. We can agree with the Commenters that the overall trend as shown in the chart, provided by the Commenters, indicates a downward trend for the calculated CO concentrations in the Albuquerque/Bernalillo County area for recent years. However, we consider this downward trend to be attributable to the success of control measures and implementation of enforceable air quality plans adopted by Albuquerque/Bernalillo County. Thus, removing the oxygenated fuel content requirement as requested by the Commenters (even if EPA had such authority which, as explained previously, it does not) could potentially cause CO concentrations in the area to increase. We believe that the measures adopted by the Albuquerque/Bernalillo County are adequate, and reflect a coherent way air planning and transportation have come together to address air quality issues in the area. For all of these stated reasons, we disagree with the Commenters's opposition to the existing program.

Comment #2: Chevron states that on multiple occasions this past season the railroad was unable to deliver ethanol tank cars into their terminal when they were needed. Chevron also stated they experienced similar problems in their Phoenix and Las Vegas terminals, as well. In those instances, Chevron claims that they had to arrange to purchase and truck ethanol into their terminals to ensure a continuous and reliable supply to the customers.

Response to Comment #2: This comment is not relevant to today's rulemaking action. Various forms of the Oxygenated Fuels Program have been in place since 1988 in the area, and EPA approved the Program utilizing ethanol in 1993. Today's rulemaking only approves minor grammatical and typographical changes to the existing program; it does not change the substance of the program EPA approved in 1993. Chevron's concern about ethanol supply to meet the existing program, therefore, is not relevant to today's action.

As noted previously, the State has the authority to include these measures under section 116 of the Act in its SIP. Again, comments concerning ethanol supply issues should have also been directed to the State. Therefore, we can not delete these measures from the SIP, if the State has adopted or wants to include them in its SIP.

As far as Chevron's Albuquerque terminal operation is concerned, we believe that the delivery and on-time availability of ethanol scenarios described above are largely business strategy related matters rather than a CO maintenance issue. Such matters are best addressed through merchandise inventory preparations, factoring storage tank design/capacity estimates, advance scheduling/planning, and forecasting considerations.

This concludes our responses to the written comments we received during public comment period concerning the April 14, 2005 (70 FR 19723), New Mexico proposed SIP revision.

4. What Areas in New Mexico Will These Rule Revisions Affect?

These rule revisions affect all sources of air emissions operating within the Albuquerque/Bernalillo County, New Mexico area.

II. Final Action

Today, we are finalizing approval of the CO limited maintenance plan and its relevant parts of the NMAC including revisions to the General Provisions (''Resolutions,'' ''Definitions,'' and ''Interpretation''), I&M Program, the Oxygenated Fuels Program, and the contingency measures. We published the proposal for this approval on April 14, 2005 (70 FR 19723).

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 14, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

■ 2. Section 52.1620 is amended as follows:

■ a. In paragraph (c), in the second table entitled ''EPA Approved Albuquerque/

Bernalillo County, NM Regulations,'' by revising the entries for parts 1, 100, and 102.

■ b. In paragraph (e), in the second table entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP'' by adding one new entry to the end of the table. The revisions read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Explanation
Albuquerque/Bernalillo County, Air Quality Control Regulations				
* * *	* * *			
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
Part 1 (20.11.1 NMAC)	General Provisions	09/07/04	7/21/05 [Insert FR page where document begins]	
* * *	* * *			
Part 100 (20.11.100 NMAC)	Motor Vehicle Inspection—Decentralized	09/07/04	7/21/05 [Insert FR page where document begins]	
Part 102 (20.11.102 NMAC)	Oxygenated Fuels	09/07/04	7/21/05 [Insert FR page where document begins]	
* * *	* * *			

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* * *	* * *			
Second 10-year maintenance plan (limited maintenance plan) for Albuquerque/Bernalillo County.	Bernalillo County	09/07/04	7/21/05 [Insert FR page where document begins]	
* * *	* * *			

■ 3. Section 52.1627 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.1627 Control strategy and regulations: Carbon monoxide.

* * * * *

(b) Approval—The Albuquerque/Bernalillo County carbon monoxide limited maintenance plan revision dated September 7, 2004, meets the requirements of section 172 of the Clean Air Act, and is therefore approved.

[FR Doc. 05–14388 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 05–59 and 04–73; FCC 05–137]

Assessment and Collection of Regulatory Fees for Fiscal Year 2005; Assessment and Collection of Regulatory Fees for Fiscal Year 2004

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we conclude a proceeding to collect $280,098,000 in regulatory fees for Fiscal Year (FY) 2005. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities. We also deny the petition for reconsideration filed by Cingular Wireless LLC of the Commission's *FY 2004 Report and Order.*

DATES: Effective August 22, 2005.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream, Office of Managing Director at (202) 418–0408.

SUPPLEMENTARY INFORMATION:

Adopted: July 1, 2005.

Released: July 7, 2005.

By the Commission: Commissioner Copps concurring and issuing a statement; Commissioner Adelstein approving in part, concurring in part, and issuing a statement.

TABLE OF CONTENTS

I. Introduction

1. In this *Order,* we conclude a proceeding to collect $280,098,000 in regulatory fees for Fiscal Year (FY) 2005. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[2] We also deny the petition for reconsideration filed by Cingular Wireless LLC of the Commission's *FY 2004 Report and Order.*[3]

II. Discussion

A. Development of FY 2005 Fees

1. Calculation of Revenue and Fee Requirements

2. As explained below, we adjust our section 9 regulatory fees to reflect the requirement to collect $280,098,000 in regulatory fees during FY 2005. As described in the *FY 2005 NPRM*,[4] this adjusted amount is $7,140,000, or approximately 2.6 percent greater than the $272,958,000 we were required to collect during the previous fiscal year. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees. The results of this calculation are contained in Attachment C.[5] For FY 2005, this allocation was done using FY 2004 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 2.6 percent to reflect the increase in regulatory fees from FY 2004 to FY 2005. These FY 2005 amounts were then divided by the number of payment units in each fee category to determine the unit fee.[6] In instances of small fees, such as licenses that are renewed for a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded to the nearest $5 or $25 in accordance with 47 U.S.C. 159(b)(2).

2. Additional Adjustments to Payment Units

3. In calculating the FY 2005 regulatory fees in Attachment D, we further adjusted the FY 2004 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[7] Where appropriate, we adjusted and/or rounded our final estimates to take into consideration variables that may impact the number of payment units, such as waivers and/or exemptions that may be filed in FY 2005, and fluctuations in the number of licensees or station operators due to economic, technical or other reasons. Therefore, when we note that our estimated FY 2005 payment units are based on FY 2004 actual payment units, we may have rounded the number for FY 2005 or adjusted it slightly to account for these variables.

4. We consider additional factors to determine regulatory fees for AM and FM radio stations. These factors are facility attributes (class of service and type (AM or FM) of service), as well as the population served by the radio station. Calculating the population served for each radio station is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the class and type of service, as well as the population served, determine the regulatory fee amount to be paid.

3. Commercial Mobile Radio Service (CMRS) Messaging Service

5. In the *FY 2005 NPRM*, the Commission proposed to continue its policy of maintaining the CMRS Messaging Service regulatory fee at the rate calculated in FY 2003 and FY 2004 to avoid further contributing to the financial hardships associated with a declining subscriber base.[8] We received no comments or reply comments on this matter. Consequently, we will maintain the CMRS Messaging Service regulatory fee at $0.08 per subscriber.

4. Local Multipoint Distribution Service (LMDS)

6. In the FY 2004 proceeding, the Commission identified a difference in treatment between LMDS Block A and Block B licensees for the purposes of assessing section 9 regulatory fees. This difference resulted in a disproportionately higher fee obligation on LMDS Block B licenses when compared on a per-megahertz (MHz) basis.[9] As a result, in the *FY 2005 NPRM*, we proposed to amend the fee schedule and assess LMDS regulatory fees on a flat MHz basis.[10] We received two comments on this proposal. These commenters oppose the proposal to collect LMDS regulatory fees on a per-MHz basis, arguing that the Commission cannot use a per-MHz regulatory fee for LMDS without using the same fee methodology for the 24 GHz and 39 GHz services.[11] We decline to adopt a per-MHz fee methodology for LMDS at this

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[2] 47 U.S.C. 159(a).

[3] Assessment and Collection of Regulatory Fees for Fiscal Year 2004, *Report and Order*, 19 FCC Rcd 11,662 (2004) (*FY 2004 Report and Order*); *see infra paras.* 38–41.

[4] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2005, *Notice of Proposed Rulemaking*, 70 FR at 9575, 9576, para. 5, (2005) (*FY 2005 NPRM*).

[5] It is important to note that the required increase in regulatory fee payments of approximately 2.6 percent in FY 2005 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of estimated payment units in a service category, the actual fee itself is sometimes increased by a number other than 2.6 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact of the fee increase may be greater.

[6] In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber, etc.

[7] The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). We also consulted industry sources including but not limited to *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast* and *Annual CMRS Competition Report.* For additional information on source material, see Attachment B.

[8] *See FY 2005 NPRM*, 70 FR at 9576, para. 5.

[9] *FY 2004 Report and Order*, 19 FCC Rcd 11,662, 11,669, para. 16. Block A licenses are authorized for 1150 MHz of spectrum, while Block B licenses are authorized for 150 MHz of spectrum. Using the authorized bandwidth for each license as the basis for comparison, the Commission noted that the regulatory fee for Block B licenses in FY 2004 was significantly higher on a per-MHz basis than the fee for Block A licenses. On a per-MHz basis, Block B licensees, which are authorized for 150 MHz in the 31,000–31,075/31,225–31,300 MHz bands, paid regulatory fees equivalent to $1.80 per MHz ($270 divided by 150 MHz) in FY 2004, while Block A licensees, which are authorized for 1150 MHz of spectrum, paid the equivalent $0.24 per MHz ($270 divided by 1150 MHz).

[10] *FY 2005 NPRM*, 70 FR at 9577, para. 7. The Commission proposed to set a per-MHz per unit fee of $0.44 for LMDS licensees, and then multiply the unit fee by the amount of bandwidth authorized for Block A and Block B licenses. As proposed, in FY 2005 the regulatory fee amount for Block A licensees would have been $0.44 multiplied times 1150 MHz = $506, rounded to $505; while the amount for Block B licensees would have been $0.44 multiplied times 150 MHz = $66, rounded to $65.

[11] Comments of XO Communications (XO), at 2–7; Comments of the Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (BMDDP), at 2–4.

time, and we will therefore retain our existing methodology for assessing LMDS fees for FY 2005.[12]

7. The commenters also argued that LMDS should be reclassified for fee assessment purposes as a microwave service.[13] The Commission determined in its FY 2003 fee proceeding that LMDS was developing on a separate track from microwave services and that it should be moved into a separate fee category.[14] The Commission subsequently rejected arguments to place LMDS in the microwave fee category in the *FY 2004 Report and Order*.[15] XO and BMDDP have presented no new evidence or arguments that would cause us to reconsider that decision. We find no compelling reason to reclassify LMDS as a microwave service, which would reduce the LMDS annual fee by more than 80 percent, and thereby impose a disproportionate financial burden on fee payers in other service categories. We therefore will maintain the existing regulatory fee classification for LMDS for FY 2005.

5. International Bearer Circuits

8. We decline to change or modify the methodology for assessing regulatory fees for international carriers at this time. In the *FY 2005 NPRM*, we sought comment on possible changes to the regulatory fees assessed on international carriers.[16] Only three parties filed comments and/or reply comments on this matter.[17] The Commission currently assesses regulatory fees on international carriers based on the number of active international bearer circuits the carrier had the previous year.[18]

9. We are not persuaded by these commenters that a significant change to our section 9 regulatory fee assessment methodology for international bearer circuits is warranted at this time, or that the benefits of changing our assessment methodology outweigh the costs of modifying our systems and processes at this time. We decline to adopt the Tyco proposal to create a new, separate fee category for non-common carrier cable landing licensees at this time.[19] As a practical matter, we note that we have at present no acceptable methodology for allocating fee requirement between categories of payers.[20] Even if we had an acceptable methodology, we would not be able to undertake the required analysis in time for FY 2005 fee payments and still comply with the section 9(b)(3) notification requirement. Moreover, because creating a new section 9 regulatory fee category would impact other international carriers, we would want to address the issue of regulatory fee payments by international carriers as a whole and not make discrete changes for one category of payers at this time. In addition, we conclude that Tyco's main concern is addressed by modifying the section 9 regulatory fee for international bearer circuits rather than creating an entirely new category of section 9 regulatory fees. To that end, we note that these fees have declined substantially, due to increased capacity in the active circuit market: The FY 2005 section 9 fee assessment of $1.37 per 64 kbps circuit is just over half the $2.52 per 64 kbps circuit fee adopted for FY 2004, and is 32% below the $2.01 per 64 kbps circuit proposed in the *FY 2005 NPRM*. For these reasons, we find that it would not be appropriate to change the fee assessment for international carriers for FY 2005. We note that in the *FY 2005 NPRM*, we stated that we would not implement any changes to the bearer circuit fee assessment methodology for this FY 2005 collection cycle.[21]

6. Regulatory Fees for Direct Broadcast Service (DBS) Providers and Cable Television Operators

10. We decline to modify the FY 2005 regulatory fee assessment methodology for DBS providers in response to the comments of the National Cable and Telecommunications Association (NCTA) and American Cable Association (ACA). NCTA argues that cable operators pay a disproportionately larger amount of the Commission's regulatory fees as compared to DBS providers, despite the fact that they are similarly situated competitors.[22] NCTA proposes that the Commission adopt the same per-subscriber assessment for DBS operators that applies to cable television operators. DirecTV, Inc. and Echostar Satellite L.L.C. (DirecTV & Echostar), in joint reply comments, argue that the cable operators have failed to make the required showing to satisfy the legal standard in section 9 of the Act for changes to the Commission's regulatory fee structure.[23] DirecTV and Echostar further argue that the costs to the Commission of regulating cable exceed those associated with DBS.[24]

11. We agree that the cable commenters have not made a compelling argument, consistent with the standard set forth in section 9(b)(3) for ''permitted amendments'', to justify a change to the section 9 regulatory fees for DBS operators. Moreover, the Commission has not provided notice for a change to the fee methodology for DBS operators. However, the Commission may seek further information on this issue during FY 2006 in order to fully explore whether there is a legal basis for such a change and to analyze the impact of any change in the methodology used to assess fees both for DBS providers and cable television operators. Therefore, for FY 2005, we will continue to use our current methodology for assessing regulatory fees for cable television operators and DBS operators.

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[12] However, we may revisit the per-MHz and other fee methodologies in the future.

[13] XO Comments at 2–5; BMDDP Comments at 4–5.

[14] Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15,985, 15,989, at para. 9 (2003) (*FY 2003 Report and Order*).

[15] *FY 2004 Report and Order*, 19 FCC Rcd at 11,669, para. 16.

[16] *FY 2005 NPRM*, 70 FR at 9577, 9578, paras. 11–17.

[17] Tyco filed comments and reply comments, SIA filed comments and Level 3 filed reply comments that addressed the international bearer circuit issue. The parties generally argued that the current methodology for assessing regulatory fees on the number of active circuits favors older, lower capacity systems, and a fee system based on cable landing licenses and international section 214 authorizations would be administratively simpler and provide an incentive for carriers to initiate new services.

[18] Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01–76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe—International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC Web site at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-249904A4.pdf*).

[19] Tyco Comments at 7–8. We may revisit this determination in the regulatory fee proceeding for FY 2006.

[20] Tyco proposes that the Commission use either employee or employee-hour equivalents to establish the regulatory fee requirements for non-common carrier cable landing licensees. Tyco Comments at 23–25.

[21] *FY 2005 NPRM*, 70 FR at 9578, para. 16.

[22] Comments of NCTA at 4–8. *See also* ACA Comments at 2–3 (arguing that the difference in regulatory fee treatment increases the burden on cable operators in small markets).

[23] Reply Comments of DirectTV and Echostar at 3.

[24] *Id.* at 5.

7. Multichannel Video Distribution and Data Service (MVDDS)

12. We decline to establish a MVDDS regulatory fee category at this time. In our *FY 2005 NPRM,* we proposed that, since MVDDS licenses were first awarded in 2004 and equipment is still under development, we would not establish MVDDS as a new regulatory fee category in FY 2005.[25] We received no comments or reply comments on this matter. We therefore adopt our proposal and will not establish a MVDDS regulatory fee category for FY 2005.

8. Broadband Radio Service (BRS)/ Educational Broadband Service (EBS) (Formerly MDS/MMDS and ITFS)

13. We note that the BRS/EBS proceeding is currently pending.[26] As we stated in the *FY 2005 NPRM,* we are exploring regulatory fee assessment issues for BRS/EBS in that proceeding.[27] To the extent we adopt any changes to our regulatory fee rules in that proceeding, such changes will not be effective in time for the FY 2005 regulatory fee assessments. We expect to make any appropriate adjustments in the FY 2006 regulatory fee cycle or later.

9. Regulatory Fees for AM and FM Construction Permits

14. At the inception of our regulatory fee program in FY 1994, the regulatory fee amount for construction permits was set at an amount that, when compared to licensed stations, was commensurate to the limited nature of station operations under the terms of a construction permit. However, since 1994, the amount of fees that we have been directed to collect each year has steadily increased, while the number of estimated payment units for these construction permits has steadily decreased. This combination of increasing expected revenue and decreasing payment units for these construction permits has resulted in a regulatory unit fee that is higher than that of some licensed stations.

15. To rectify this situation, we proposed to set the AM, FM, VHF, and UHF construction permit fee to be no higher than the regulatory fee associated with the lowest licensed station for that fee category, noting that because there are unit and revenue variables in assessing the per-unit regulatory fee, it may be necessary to make revenue adjustments each fiscal year to keep the per unit regulatory fee for construction permits at the level of the lowest licensed fee for AM, FM, VHF, and UHF stations. We did not receive any comments or reply comments on this matter. Therefore, beginning in FY 2005, we will hold fee amounts for construction permits in each respective fee category (*e.g.*, AM, FM, VHF and UHF stations) to levels no higher than the lowest fee amounts for licensed facilities in each respective fee category, and if necessary, will make adjustments across only a narrow group of media fee categories, such as AM, FM, VHF and UHF stations, to keep the level of the lowest respective licensed fee.

10. Clarification of Policies and Procedures

a. Ad Hoc Issues Concerning Our Regulatory Fee Exemption Policies

16. Pursuant to 47 CFR 1.1162, the Commission does not establish regulatory fees for applicants, permittees, and licensees who qualify as government entities or non-profit entities. Despite the language of 47 CFR 1.1162, we still frequently encounter uncertainty and comments from parties with respect to our fee exemption policies. In our *FY 2005 NPRM,* we proposed certain clarifications to our exemption policies.[28] We received no comments or reply comments regarding our fee exemption policies. Therefore, we will be incorporating these clarifications into the text of the regulatory fee public notices that are generated each year prior to the collection of regulatory fees.

17. *Terminology:* In the ensuing discussion, ‘‘facility’’ includes ‘‘station’’ and ‘‘licensee’’ includes ‘‘permittee.’’ ‘‘October 1’’ means the close of business on October 1, the first day of the government fiscal year. ‘‘Fee Due Date’’ means the close of business on the day determined to be the final date by which regulatory fees must be paid. The Fee Due Date usually occurs in August or September. An ‘‘Exempt Entity’’ is a legal entity that is relieved of the burden of paying annual regulatory fees.

18. *Determination of Fee Code for a Facility:* The fee code is determined by the operational status of the facility as of October 1 of each year. This involves factors such as whether the facility is in a Construction Permit (CP) or Licensed status and a variety of other factors. Every facility has a fee code.

19. *Facility Changes During the Year:* There is no prorating of regulatory fees. For example, if a facility is in construction permit status as of the close of business October 1, but a license is granted on or after October 2, that facility is considered to be in construction permit status for the entire year. Other facility changes during the course of the year, such as technical changes, are treated in the same manner.

20. *Establishment of Exempt Status:* State, local, and Federal government agencies and IRS-certified not-for-profit entities are generally exempt from payment of regulatory fees. The Commission requires that each exempt entity have on file a valid IRS Determination Letter or certification from a government authority documenting its exempt status. In instances where there is a question regarding the exempt status of an entity, the FCC may request, at any time, for the entity to submit an IRS Determination Letter or certification from a government authority that documents its exempt status.

21. *Subsidiaries of Exempt Entities:* The licensee of a facility may be distinct from the ultimate owner. Exempt entities may hold one or more licenses for media facilities directly and/or through subsidiaries. Facilities licensed directly to an exempt entity and its exempt subsidiaries are excused from the regulatory fee obligation. However, licensees that are for-profit subsidiaries of exempt entities are subject to regulatory fees regardless of the exempt status of the ultimate owner.

Examples

A University owns a commercial facility whose profits are used to support the University and/or its programs. If the facility is licensed to the University directly, or to an exempt subsidiary of the University, it is exempt from regulatory fees. If, however, the license is held by a for-profit subsidiary, regulatory fees are owed, even though the University is an exempt entity.

A state pension fund is the majority owner of a for-profit commercial broadcasting firm. The facilities licensed to the for-profit broadcasting firm would be subject to regulatory fees, even though it is owned by an exempt agency.

22. *Responsible Party, and the Effects of Transfers of Control:* The entity holding the license for a facility as of the Fee Due Date is responsible for the regulatory fee for that facility. Eligibility for a regulatory fee exemption is determined by the status of the licensee

[25] *FY 2005 NPRM,* 70 FR at 9579, para. 21.

[26] *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands *et al.*, *Report & Order and Further Notice of Proposed Rulemaking,* 19 FCC Rcd 14165, 14293–97 (2004) *(R&O and FNPRM).*

[27] *FY 2005 NPRM,* 70 FR at 9579, paras. 22–23.

[28] *FY 2005 NPRM,* 70 FR at 9579, 9580, paras. 26–30.

as of the Fee Due Date, regardless of the status of any previous licensee(s).

b. Regulatory Fee Obligations for Digital Broadcasters

23. In our *FY 2005 NPRM,* we noted that our current schedule of regulatory fees does not include service categories for digital broadcasters.[29] Licensees in the broadcast industry pay regulatory fees based on their analog facilities. For licensees that broadcast in both the analog and digital formats, the only regulatory fee obligation at the present time is for their analog facility. Moreover, a licensee that has fully transitioned to digital broadcasting and has surrendered its analog spectrum would have no regulatory fee obligation under the current fee regime. We sought comment on whether to establish a regulatory fee category for digital broadcasters, but received no comments or reply comments on this matter.[30] At this time, we will maintain the regulatory fee obligation that applies only for the analog facility.

c. Regulatory Fee Obligations for AM Expanded Band Broadcasters

24. We do not require AM Expanded Band radio stations to pay section 9 regulatory fees for their expanded band AM station at this time. In the *FY 2005 NPRM,* we proposed to clarify this point and to explain that licensees that operate a standard band AM station (540–1600 kHz) that is linked to an AM Expanded Band station are subject to regulatory fees for their standard band station only.[31] We recognized uncertainty about the regulatory fee status in the industry that resulted from the fact that AM Expanded Band radio service is not among the Commission's categories of general exemptions from regulatory fees specified in the Commission's rules.[32] We received no comments or reply comments on this matter.

25. We will continue to refrain from requiring AM Expanded Band radio stations to pay section 9 regulatory fees for their stations. However, we note that our decision not to require section 9 regulatory fee payments for AM Expanded Band stations is not a permanent exemption from regulatory fees for AM Expanded Band Radio Service. Because the movement to the expanded band is voluntary and helps to reduce interference in the standard bandwidth, we will continue our policy of not subjecting this relatively small group of stations to regulatory fees. However, at some future point when the migration of standard band broadcasters to the Expanded Band has advanced, we may consider establishing § 9 regulatory fee requirements for AM Expanded Band stations.

d. Effective Date of Payment of Multi-Year Wireless Fees

26. The first eleven fee categories in our Attachment D, Schedule of Regulatory Fees, constitute a general fee category known as multi-year wireless fees. Regulatory fees for this category are generally paid in advance, and for the amount of the entire 5-year or 10-year term of the license. Because regulatory fees are paid at the time of license renewal (or at the time of a new application), these fees can be paid at any time during the fiscal year. As a result, there has been some confusion as to the regulatory fee rate that should apply at the time of license renewal. Current fiscal year regulatory fees generally become effective 30 or 60 days after publication of the fees *Order* in the **Federal Register**, or in some instances, 90 days after delivery of the Order to Congress. Current procedures regarding the renewal of multi-year wireless fees stipulate that licensees may submit their fee payments no more than 90 calendar days prior to the expiration of their licenses. The regulatory fee rate that applies at the time of renewal (or at the time of an application for a new license) depends on the date that payment is physically received within the 90 day period, and how this date relates to the "effective date" of the current fiscal year regulatory fees. Generally, the "effective date" of the current fiscal year regulatory fees is published in our fee public notices soon after the *Order* is released. If the renewal payment (or application of a new license) is physically received before the "effective date," the prior fiscal year regulatory fee rate applies. If the renewal payment (or application of a new license) is physically received on or after the "effective date", the current fiscal year regulatory fee rate applies.

11. Notification, Assessment and Collection of Regulatory Fees

27. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. Accordingly, in FY 2005, as in prior years, we will make available to all regulatees these public notices, fact sheets and other relevant fee payment information on our Web site at *http://www.fcc.gov/fees/regfees.html.* In the event that regulatees do not have access to the Internet, we will mail public notices and other relevant materials upon request. Regulatees and the general public may request such information by contacting the FCC CORES HelpDesk at (877) 480–3201, Option 4.

28. In addition to making the above information available on-line for all of our regulatees, we proposed in our *FY 2005 NPRM* to send specific regulatory fee assessments or bills by surface mail to regulatees in a select group of fee categories.[33] We are pursuing our billing initiatives as part of our effort to modernize our financial practices. Eventually, we may expand our billing initiatives to include all regulatory fee service categories. For now, based on the results of our assessment and billing initiatives from last year, and the resources currently available to us, we will proceed with our various FY 2005 initiatives as described below.

a. Interstate Telecommunications Service Providers (ITSPs)

29. In FY 2001, we began sending pre-completed FCC Form 159–W assessments to carriers in an effort to assist them in paying the Interstate Telecommunications Service Provider (ITSP) regulatory fee.[34] The fee amount on FCC Form 159–W was calculated from the FCC Form 499–A report, which carriers are required to submit by April 1st of each year. Throughout FY 2002 and FY 2003, we refined the FCC Form 159–W to simplify the regulatory fee payment process.[35] In FY 2004, we generated and mailed the same pre-completed FCC Form 159–W's to carriers under the same dissemination procedures, but we informed them that we will be treating the amount due on Form 159–W as a *bill*, rather than as an

[29] *Id.* at 9580, para. 31.

[30] *Id.*, para. 33.

[31] *Id.*, para. 34–36.

[32] 47 CFR 1.1162.

[33] *FY 2005 NPRM,* 70 FR at 9575, paras. 38–61. We clarify the distinction between an assessment and a bill. An "assessment" is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee). An assessment is not entered into the Commission's accounts receivable system as a current debt. A "bill" *is* automatically entered into our financial records as a debt owed to the Commission. Bills reflect the amount owed and have a due date of the last day of the fee payment window. Consequently, if a bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 CFR 1.1161(c), 1.1164(f)(5), 1.1910.

[34] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 2001, *Report and Order,* 16 FCC Rcd 13525, at 13590, para. 67 (2001) *(FY 2001 Report and Order). See also* FCC Public Notice—Common Carrier Regulatory Fees (August 3, 2001) at 4.

[35] Beginning in FY 2002, the Form 159–W included a payment section that allowed carriers the opportunity to send in Form 159–W in lieu of completing Form 159 Remittance Advice Form.

assessment. Other than the manner in which Form 159–W payments were entered into our financial system, carriers experienced no procedural changes regarding the use of the FCC Form 159–W when submitting payment of their FY 2004 ITSP regulatory fees. In our *FY 2005 NPRM,* we sought comment on this billing initiative and on ways to improve it.

30. We received no comments or reply comments on our ITSP billing initiative for FY 2005. We will continue our ITSP, Form 159–W, billing initiative in FY 2005.

b. Satellite Space Station Licensees

31. In FY 2004, for the first time, we mailed regulatory fee bills through surface mail to all licensees in our two satellite space station service categories. Specifically, geostationary orbit space station (''GSO'') licensees received bills for their operational *satellites;*[36] and non-geostationary orbit space station (''NGSO'') licensees received bills for their *systems.*[37] In our *FY 2005 NPRM,* we proposed to continue our billing initiative for our GSO and NGSO satellite space station categories. We sought comment on this proposal and received comments from the Satellite Industry Association (''SIA'').

32. SIA states that its members experienced a wide range of problems with our billing system in FY 2004. For example, in some cases licensees did not receive a pre-printed bill for all of their space stations.[38] Several satellite operators report that they received bills that substantially undercounted the number of space stations for which they owed fees. However, the bills that were issued in FY 2004 lacked call sign information, making it impossible for most operators to determine which satellites were missing from their bills. SIA offered suggestions for improving the process.[39]

33. We have modified our Fee Filer online payment system so that it will address most of SIA's suggested corrective measures.[40] We will address SIA's other suggestions by generating and mailing the bills at the earliest allowable date after this *FY 2005 Order* becomes effective. We will also ensure that we will have knowledgeable staff available to assist licensees with their billing questions and to resolve any bill disputes.

c. Media Services Licensees

34. In our *FY 2005 NPRM,* we proposed that we would continue to generate regulatory fee assessment postcards for media services following the same procedures we used in FY 2004. We noted that we mail the postcards on a per-facility basis and that they serve to provide parties with the fee payment due date and the assessed fee amount for the facility (as well as the data attributes that were used to determine the amount).[41] We received no comments or reply comments on our proposal. We will continue our assessment initiative for media services entities as we originally proposed. Specifically, we will mail a single round of postcards to licensees and their other known points of contact in our Consolidated Database System (CDBS) and Commission Registration System (CORES)—our two official databases for media services. By doing so, licensees and their points of contact will all be furnished with the same fee information for the facility in question. The postcards will direct parties to a Commission-authorized Web site to update or correct fee information regarding the facility, or to certify their fee-exempt status if need be.[42] The postcards will also provide the telephone number of our FCC CORES Help Desk at (877) 480–3201, Option 4, in the event that parties need additional assistance.

35. We emphasize that parties must still submit a completed Form 159 with their fee payment, despite having received an assessment postcard. The postcards are *not* to be used as a substitute for completing a Form 159. We cannot guarantee that a party's regulatory fees will be posted accurately against its account if a completed Form 159 is not returned with the fee payment. We also emphasize that the *facility ID* is the most important data element that parties need to include on their completed Form 159. The facility ID is a unique identifier that never changes over the course of a facility's existence (unlike its call sign). We prominently display each facility's facility ID on its assessment postcard, and our Form 159 filing instructions require that each facility's facility ID (and call sign) needs to be provided. However, each year we typically receive many incomplete Form 159s that do not provide the facility ID of the facility whose fee is being paid.

d. Cable Television Subscribers

36. We adopt our proposal to generate fee assessment letters for cable operators who are on file as having paid FY 2004 regulatory fees for their basic cable subscribers.[43] We received no comments or reply comments on this issue. Under our proposal, our assessment letter to each operator would announce the due date for payment of FY 2005 regulatory fees; reflect the subscriber count for which the operator paid FY 2004 regulatory fees; and request that the operator access a Commission-authorized Web site to provide its aggregate count of basic cable subscribers as of December 31, 2004—the date that cable operators are to use as the basis for determining their regulatory fee obligations for basic cable subscribers. If the number of subscribers as of December 31, 2004 differs from the number paid for FY 2004, operators would be required to provide a brief explanation for the differing subscriber counts and indicate when the difference occurred. Cable operators who do not have access to the Internet would be able to contact the FCC CORES Help Desk at (877) 480–3201, Option 4, to provide their subscriber count as of

[36] ''Satellites'' are in operation on the first day of the fiscal year and not co-located with and technically identical to another operational satellite (*i.e.*, not functioning as a spare satellite) on the first day of the fiscal year.

[37] ''Systems'' are licensed by the Commission and operational on the first day of the fiscal year.

[38] SIA Comments at 11.

[39] *Id.* Specifically, SIA suggests: (1) Licensees should be issued a single bill that lists all the space stations for which the Commission believes the licensee owes fees; (2) call signs should be included on bills so that licensees can verify the accuracy of the billing information; (3) procedures should be in place to permit a bill to be modified or supplemented if it is incorrect; (4) bills should be mailed well in advance of the payment deadline so that licensees have a reasonable period to review the bill, seek additional information, if needed, and correct any errors prior to the payment due date; and (5) the Commission staff members who are knowledgeable about satellite licensing should be available to assist licensees by answering questions and resolving problems.

[40] Although the process of mailing one bill per space station will continue unchanged, Fee Filer will automatically find and consolidate all regulatory fees which have been billed, based upon FCC Registration Number (FRN) and password entered. Information that describes each individual fee will include FRN, call sign, and the fee amount. This information will be subject to review by the Fee Filer user, who can then make modifications, deletions or additions online. After the user confirms the details of each fee, he/she may print a one-page Remittance Voucher which is to accompany the payment. The one-page Remittance Voucher will reflect the total payment and the detail applicable to that summary payment.

[41] Fee assessments were issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters. Fee assessments were not issued for broadcast auxiliary stations, nor will they be issued for them in FY 2005.

[42] The Commission-authorized Web site will be available on-line throughout this summer. The site's Web address is *http://www.fccfees.com.*

[43] *FY 2005 NPRM,* 70 FR at 9583, para. 57.

December 31, 2004. Payment procedures for FY 2005 regulatory fees are the same as they were in previous years. For example, cable operators are to complete the FCC Form 159 Remittance Advice when making their payment, and are to certify their December 31, 2004 subscriber count in Block 30 of the Form 159.

37. We also sought comment on a proposal to require the cable television operators to annually report their basic subscriber counts to the Commission prior to paying regulatory fees for the fiscal year in question.[44] The Commission proposed to use the reported subscriber counts to audit regulatory fee payments that are collected later in the fiscal year. NCTA was the only commenter on this proposal. NCTA agreed that a June 1st reporting requirement could be met with accurate subscriber information from the previous year and would not be unduly burdensome for operators to file.[45] We do not adopt a subscriber reporting requirement at this time. We will continue to assess our need for information to manage the regulatory fee assessment program and may revisit this issue in the future.

B. FY 2005 Fee Determination and FY 2004 Reconsideration

12. Commercial Mobile Radio Service (CMRS) Providers

38. In this section, we address the arguments presented by Cingular and CTIA in their comments to the *FY 2005 NPRM.* In addition, we address Cingular's petition for reconsideration of the Commission's *FY 2004 Report and Order* and the comments filed in response to Cingular's petition.[46]

39. Prior to FY 2004, the Commission relied on Cellular, PCS, and SMR providers to compute and submit the regulatory fee applicable to them based on the number of their subscribers. Beginning in fiscal year 2004, the Commission decided to take an alternative approach and adopted a system of mailing assessments to Cellular, PCS, and SMR providers based on subscriber data contained in their Numbering Resource Utilization Forecast (NRUF) reports.[47] NRUF data is collected by the North American Numbering Plan Administrator (NANPA) to monitor the utilization of telephone numbers by carriers. For purposes of assessing regulatory fees, the Commission uses the count of ''assigned'' telephone numbers (TN's)[48] stated by carriers in their NRUF reports (adjusted for porting).[49] For carriers not required to file NRUF reports, the self-computation method still applies.[50]

40. We disagree with the arguments of Cingular, CTIA, and others that the NRUF data are not sufficiently accurate for the purpose of assessing regulatory fees for the three classes of Commercial Mobile Radio Service (CMRS) providers—the Cellular Radiotelephone Service, the Personal Communications Service (PCS), and the Specialized Mobile Radio (SMR) Service. Evidence of the accuracy and reliability of the NRUF data can be found in the fact that while the initial FY 2004 assessment letters calculated regulatory fees based on approximately 162.36 million numbers, the reconciliation process, based on provider responses, revised the regulatory fee assessment by only 1.4 percent (to 160.02 million numbers). Further evidence of the reliability of the NRUF data is that in FY 2004, we issued 127 initial assessment letters to CMRS providers. Only 3.2 percent of the respondents had adjustments of greater than 5,000 subscribers but less than 20,000; and only 5.5 percent had adjustments of greater than 20,000 subscribers. This experience indicates that NRUF data is sufficiently reliable and accurate for the purposes of assessing section 9 regulatory fees. We therefore reject Cingular's request to reconsider the use of NRUF data in calculating FY 2004 fees for these three classes of CMRS carriers. We will also continue to rely on the NRUF data for the FY 2005 regulatory fee assessments for these carriers.

41. Further, we find no basis for the assertion in Cingular's petition that a lack of clarity in the NRUF definition of ''intermediate'' TN's (number made available for use by another telecommunications carrier or non-carrier entity) unduly complicates the correction process and makes the NRUF data unreliable.[51] The Commission's fee assessment is based only on the number of ''assigned'' TN's stated in the NRUF report. Thus, to the extent that a carrier categorizes TN's as ''intermediate,'' it has no need to make a correction.

42. These facts suggest that using NRUF data has not led to inaccurate or unfair assessments for CMRS providers. They also demonstrate that the Commission has a method to address and correct for potential anomalies that the NRUF data may implicate. We therefore disagree with Cingular and others that using NRUF data, combined with the reconciliation process, may result in overpayment of regulatory fees.[52] In fact, using NRUF data, which is subject to verification, will likely produce more accurate assessments than the self-assessment method the Commission previously used. Our experience in FY 2004 indicates that—far from being overly burdensome—this process offers CMRS providers an opportunity to correct potential errors in their data for section 9 regulatory fee assessment purposes.[53]

43. We also reject the arguments of Cingular and others that the two-step process that we established in the *FY 2004 Report and Order*—sending an initial assessment letter, which a CMRS provider may correct, followed by a final assessment letter—is unduly burdensome.[54] Cingular maintains that the correction process contemplates a burdensome number-by-number reconciliation of the NRUF data and a carrier's actual subscriber count. We clarify that carriers are not required to perform number-by-number reconciliations when making corrections. Carriers may make corrections on an aggregate basis. We will review the letters, and decide whether to accept the revised totals. Based upon this feedback, we will send out a second assessment letter that will coincide with the payment period of regulatory fees. This second assessment letter with aggregate totals will constitute the basis upon which FY 2005 regulatory fees will be paid. If we receive no response to our initial assessment letter within 21 days, we will assume that no corrections are required and the final assessment letter, which is mailed approximately 30 days

[44] *Id.,* paras. 60–61.

[45] NCTA Comments at 2.

[46] See Cingular Wireless LLC Petition for Reconsideration, MD Docket No. 04–73, filed Aug. 6, 2004 *(Cingular Petition).* We received comments in support of the *Cingular Petition* from CTIA—The Wireless Association™ (CTIA) and joint comments from seven wireless carriers (American Cellular Corporation, AT&T Wireless Services, Inc., Dobson Cellular Systems, Inc., Nextel Communications, Inc., Sprint Corporation, T-Mobile USA, Inc., and Western Wireless Corporation) (Wireless Carriers). We also received reply comments in support of the petition from the Rural Telecommunications Group, Inc. (RTG).

[47] *FY 2004 Report and Order,* 19 FCC Rcd at 11,675–76 para. 45.

[48] ''Assigned'' numbers are ''numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending.'' Instructions for Utilization and Forecast Forms, FCC Form 502 (Jun. 2003).

[49] The porting information is developed from the telephone number porting database managed by the Local Number Portability Administrator, NeuStar, Inc.

[50] *FY 2004 Report and Order,* 19 FCC Rcd at 11,677 para. 49.

[51] *Cingular Petition* at 4–5.

[52] *Cingular Petition* at 3, 5–6.

[53] *Cingular Petition* at 5–6. *See also* CTIA Comments at 3.

[54] *Cingular Petition* at 5–6.

after the initial letter, will base the fee payment due on the number of subscribers listed on the initial assessment. In response to Cingular's questions as to whether the Commission intends to allow carriers to correct so-called ''contaminated numbers'' (numbers used by a thousands-block carrier before donating the remainder of the block to the pool),[55] we clarify that carriers are permitted to address ''contaminated numbers.'' Paragraph 46 of the *FY 2004 Report and Order* specifically links the correction process with the problem of ''contaminated numbers.'' To the extent that paragraph 46 of the *FY 2004 Report and Order* does not unequivocally provide that carriers may correct the initial assessment letter to account for ''contaminated numbers,'' we hereby clarify that they may do so.

44. We will continue to use the two-step process for assessing section 9 regulatory fees on CMRS providers as proposed in the *FY 2005 NPRM*.[56] Specifically, we will continue to mail an initial regulatory fee assessment to CMRS providers based on information they submit on their NRUF forms. The initial assessment letter will include a list of the carriers' Operating Company Numbers (OCNs), and an aggregate total of assigned numbers (adjusted for porting) upon which the assessment is based.[57] If the number of subscribers on the initial assessment letter differs from the data included on their NRUF forms, CMRS providers may amend their initial assessment letter to identify their subscriber count as of December 31, 2004.

III. Procedural Matters

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

45. As in the past, regulatees whose *total* FY 2005 regulatory fee liability, including *all* categories of fees for which payment is due, amounts to less than $10 will be exempted from payment of FY 2005 regulatory fees.

2. Standard Fee Calculations and Payment Dates for Annual Regulatory Fees

46. The responsibility for payment of annual regulatory fees by service category is as follows:[58]

(a) *Media Services:* The responsibility for the payment of regulatory fees rests with the holder of the permit or license as of October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) *Wireline (Common Carrier) Services:* Fees must be paid for any authorization issued on or before October 1, 2004. However, where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(c) *Wireless Services:* Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Fees must be paid for any authorization issued on or before October 1, 2004. The number of subscribers, units or circuits on December 31, 2004 will be used as the basis from which to calculate the fee payment.

(d) *Multichannel Video Programming Distributor Services (basic cable television subscribers and CARS licenses):* The number of subscribers on December 31, 2004 will be used as the basis from which to calculate the fee payment.[59] For CARS licensees, fees must be paid for any authorization issued on or before October 1, 2004. The responsibility for the payment of regulatory fees for CARS licenses rests with the holder of the permit or license on October 1, 2004. However, in instances where a CARS license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(e) *International Services:* For earth stations and geostationary orbit space stations, payment is calculated on a per operational station basis. For non-geostationary orbit satellite systems, payment is calculated on a per operational system basis. The responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2004. However, in instances where a license or permit is transferred or assigned after October 1, 2004, responsibility for payment rests with the holder of the license or permit at the time payment is due. For *international bearer circuits,* payment is calculated on a per active circuit basis as of December 31, 2004.

47. We strongly recommend that entities who will be submitting more than twenty-five (25) Form 159–C's use the electronic Fee Filer program when sending their regulatory fee payment. We will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

3. Limitations on Credit Card Transactions

48. The U.S. Treasury has advised the Commission that it may begin rejecting Credit Card transactions greater than $99,999.99 from a single credit card in a single day. The U.S. Treasury has published Bulletin No. 2005–03 in which Federal Agencies are directed to limit credit card collections per these rules. The Commission will institute policies to conform to the U.S. Treasury policy. Entities needing to remit amounts of $100,000.00 or greater should use check, ACH or Fed Wire payment methods. Additional information can be found at *http://www.fcc.gov/fees.*

B. Enforcement

49. As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, Failure to pay regulatory fees and/or any late payment penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 (''DCIA''). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges

[55] *Cingular Petition* at 3.

[56] *See FY 2005 NPRM,* 70 FR at 9579, para. 51–52.

[57] Additionally, paragraph 48 of the *FY 2004 Report and Order* indicates that ''[i]f some subscribers are no longer customers, but have been assigned to another company, please indicate the company which has acquired these subscribers.'' Cingular suggests that it is unnecessary to report numbers because the Commission already takes ported numbers into account using the LNP database. *Cingular Petition* at 3. We agree with Cingular that it is generally unnecessary to correct ported numbers.

[58] Note that regulatees in the service categories that are shaded in grey in Attachment D do not pay *annual* regulatory fees. We collect regulatory fees from these entities *in advance* to cover the term of license. Fee payments from these entities are submitted along with their initial authorization or renewal application when that application is filed.

[59] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service customers. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2004, rather than on a count as of December 31, 2004.

will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is submitted after the filing window.

50. Furthermore, we amended our regulatory fee rules effective November 1, 2004, to provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. See 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.

C. Congressional Review Act Analysis

51. The Commission will send a copy of this *Order in MD Docket No. 05–59 and Order on Reconsideration in MD Docket No. 04–73* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

52. Accordingly, *it is ordered* pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r) that the FY 2005 9 regulatory fee assessment requirements *are adopted* as specified herein.

53. *It is further ordered*, pursuant to sections 4(i) and (j), 9, 303(r), and 405 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 159, 303(r), and 405, 47 U.S.C. 405 and 47 CFR 1.106 that the Petition for Reconsideration, filed August 6, 2004, by Cingular Wireless LLC *is denied*.

54. *It is further ordered* that part 1 of the Commission's rules are amended as set forth in Attachment G, and that these rules shall become effective August 22, 2005.

55. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order in MD Docket No. 05–59 and Order on Reconsideration in MD Docket No. 04–73*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

56. *It is further ordered* that this proceeding is *terminated*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Attachment A—Final Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act (RFA),[60] the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in its *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2005*. Written public comments were sought on the FY 2005 fees proposal, including comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[61]

I. Need for, and Objectives of, the Proposed Rules

58. This rulemaking proceeding is initiated to amend the Schedule of Regulatory Fees in the amount of $280,098,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

59. None.

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

60. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[62] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [63] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[64] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[65]

61. Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[66]

62. Small Organizations. Nationwide, there are approximately 1.6 million small organizations.[67]

63. Small Governmental Jurisdictions. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [68] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[69] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

64. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [70] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[71]

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[60] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[61] 5 U.S.C. 604

[62] 5 U.S.C. 603(b)(3).

[63] 5 U.S.C. 601(6).

[64] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[65] 15 U.S.C. 632.

[66] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[67] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[68] 5 U.S.C. 601(5).

[69] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[70] 15 U.S.C. 632.

[71] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition

Continued

We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

65. Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[72] According to Commission data,[73] 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by these rules.

66. Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.'' Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[74] According to Commission data,[75] 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by these rules.

67. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[76] According to Commission data,[77] 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by these rules.

68. Toll Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[78] According to Commission data,[79] 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by these rules.

69. Payphone Service Providers (PSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[80] According to Commission data,[81] 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by these rules.

70. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[82] According to Commission data,[83] 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by these rules.

71. Operator Service Providers (OSPs). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[84] According to Commission data,[85] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by these rules.

72. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[86] According to Commission data,[87] 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority

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of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[72] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 13310 in October 2002).

[73] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (Aug. 2003) (hereinafter ''Trends in Telephone Service''). This source uses data that are current as of December 31, 2001.

[74] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[75] ''Trends in Telephone Service'' at Table 5.3.

[76] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[77] ''Trends in Telephone Service'' at Table 5.3.

[78] 13 CFR 121.201, NAICS code 517310 (changed to 513330 in October 2002).

[79] ''Trends in Telephone Service'' at Table 5.3.

[80] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[81] ''Trends in Telephone Service'' at Table 5.3.

[82] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[83] ''Trends in Telephone Service'' at Table 5.3.

[84] 13 CFR 121.201, NAICS code 517110 (changed from 513310 in October 2002).

[85] ''Trends in Telephone Service'' at Table 5.3.

[86] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[87] ''Trends in Telephone Service'' at Table 5.3.

of prepaid calling card providers are small entities that may be affected by these rules.

73. 800 and 800-Like Service Subscribers.[88] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[89] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[90] According to our data, at the end of January, 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

74. International Service Providers. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average annual receipts.[91] For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year.[92] Of this total, 273 firms had annual receipts of under $10 million, and an additional 24 firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

75. The second category—Other Telecommunications—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' [93] According to Census Bureau data for 1997, there were 439 firms in this category that operated for the entire year.[94] Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional six firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

76. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [95] and ''Cellular and Other Wireless Telecommunications.'' [96] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[97] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[98] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[99] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[100] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

77. Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' [101] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[102] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[103] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999.[104] Thus, under this size standard, the great majority of firms can be considered small entities.

78. Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' [105] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the

[88] We include all toll-free number subscribers in this category, including those for 888 numbers.

[89] 13 CFR 121.201, NAICS code 517310 (changed from 513330 in October 2002).

[90] FCC, Common Carrier Bureau, Industry Analysis Division, Study on Telephone Trends, Tables 21.2, 21.3, and 21.4 (Feb. 19, 1999).

[91] 13 CFR 121.201, NAICS codes 517410 and 517910 (changed from 513340 and 513390 in October 2002).

[92] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513340 (issued October 2000).

[93] Office of Management and Budget, North American Industry Classification System, page 513 (1997) (NAICS code 513390, changed to 517910 in October 2002).

[94] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513390 (issued October 2000).

[95] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[96] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[97] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[98] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[99] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[100] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[101] Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 514191, ''On-Line Information Services'' (changed to current name and to code 518111 in October 2002).

[102] 13 CFR 121.201, NAICS code 518111.

[103] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[104] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[105] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

entire year.[106] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[107] Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent Trends in Telephone Service data, 719 carriers reported that they were engaged in the provision of cellular service, personal communications service, or specialized mobile radio telephony services, which are placed together in the data.[108] We have estimated that 294 of these are small, under the SBA small business size standard.[109]

79. Common Carrier Paging. The SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' [110] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[111] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[112] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

80. In the Paging Second Report and Order, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[113] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[114] The SBA has approved this definition.[115] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[116] Fifty-seven companies claiming small business status won 440 licenses.[117] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[118] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[119] Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[120] Of these, we estimate that 589 are small, under the SBA-approved small business size standard.[121] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

81. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[122] The SBA has approved these definitions.[123] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

82. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[124] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[125] According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in wireless telephony.[126] We have estimated that 294 of these are small under the SBA small business size standard.

83. Broadband Personal Communications Service. The

[106] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000).

[107] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[108] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[109] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

[110] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[111] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[112] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[113] Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (Paging Second Report and Order); *see also* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[114] Paging Second Report and Order, 12 FCC Rcd at 2811, para. 179.

[115] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[116] *See* ''929 and 931 MHz Paging Auction Closes,'' Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[117] *See* ''929 and 931 MHz Paging Auction Closes,'' Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[118] *See* ''Lower and Upper Paging Band Auction Closes,'' Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[119] *See* ''Lower and Upper Paging Bands Auction Closes,'' Public Notice, 18 FCC Rcd 11154 (WTB 2003).

[120] *See* Trends in Telephone Service, Industry Analysis Division, Wireline Competition Bureau, Table 5.3 (Number of Telecommunications Service Providers that are Small Businesses) (May 2002).

[121] 13 CFR 121.201, NAICS code 517211.

[122] Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[123] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[124] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[125] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[126] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (August 2003). This source uses data that are current as of December 31, 2001.

broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[127] For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[128] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[129] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[130] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[131]

84. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses.[132] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

85. Narrowband Personal Communications Services. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less.[133] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[134] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[135] A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[136] A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[137] The SBA has approved these small business size standards.[138] A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[139] Three of these claimed status as a small or very small entity and won 311 licenses.

86. Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[140] We have defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[141] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[142] Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is ''entrepreneur,'' which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[143] The SBA has approved these small size standards.[144] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[145] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[146] Seventeen winning bidders

[127] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order,* 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996); *see also* 47 CFR 24.720(b).

[128] *See* Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order,* 11 FCC Rcd 7824, 7852, para. 60.

[129] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[130] FCC News, ''Broadband PCS, D, E and F Block Auction Closes,'' No. 71744 (released January 14, 1997).

[131] *See* ''C, D, E, and F Block Broadband PCS Auction Closes,'' *Public Notice,* 14 FCC Rcd 6688 (WTB 1999).

[132] *See* ''C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 2339 (2001).

[133] Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,* 10 FCC Rcd 175, 196, para. 46 (1994).

[134] *See* ''Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674,'' *Public Notice,* PNWL 94–004 (released Aug. 2, 1994); ''Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787,'' *Public Notice,* PNWL 94–27 (released Nov. 9, 1994).

[135] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making,* 15 FCC Rcd 10456, 10476, para. 40 (2000).

[136] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making,* 15 FCC Rcd 10456, 10476, para. 40 (2000).

[137] Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, *Second Report and Order and Second Further Notice of Proposed Rule Making,* 15 FCC Rcd 10456, 10476, para. 40 (2000).

[138] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated December 2, 1998.

[139] *See* ''Narrowband PCS Auction Closes,'' *Public Notice,* 16 FCC Rcd 18663 (WTB 2001).

[140] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022 (2002).

[141] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

[142] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

[143] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022, 1088, para. 173 (2002).

[144] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

[145] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

[146] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[147] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[147]

87. Upper 700 MHz Band Licenses. The Commission released a Report and Order, authorizing service in the upper 700 MHz band.[148] This auction, previously scheduled for January 13, 2003, has been postponed.[149]

88. 700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[150] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[151] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[152] SBA approval of these definitions is not required.[153] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[154] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[155]

89. Specialized Mobile Radio. The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[156] The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[157] The SBA has approved these small business size standards for the 900 MHz Service.[158] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[159] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[160]

90. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[161] In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.[162] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

91. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

92. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[163] According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees.[164] If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses

[148] Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order,* 16 FCC Rcd 1239 (2001).

[149] *See* ''Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled,'' *Public Notice,* 16 FCC Rcd 13079 (WTB 2003).

[150] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299 (2000).

[151] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299, 5343, para. 108 (2000).

[152] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299, 5343, para. 108 (2000).

[153] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[154] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 18026 (2000).

[155] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[156] 47 CFR 90.814(b)(1).

[157] 47 CFR 90.814(b)(1).

[158] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

[159] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,' '' *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[160] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[161] *See,* ''800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 17162 (2000).

[162] *See,* ''800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 1736 (2000).

[163] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[164] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513322 (October 2000).

under the SBA's small business standard.

93. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[165] This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[166] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[167] The SBA has approved these small size standards.[168] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[169] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[170] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[171] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[172]

94. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we could use the definition for ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any such entity employing no more than 1,500 persons.[173] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. Moreover, because PMLR licensees generally are not in the business of providing cellular or other wireless telecommunications services but instead use the licensed facilities in support of other business activities, we are not certain that the Cellular and Other Wireless Telecommunications category is appropriate for determining how many PLMR licensees are small entities for this analysis. Rather, it may be more appropriate to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[174]

95. The Commission's 1994 Annual Report on PLMRs[175] indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

96. Fixed Microwave Services. Fixed microwave services include common carrier,[176] private operational-fixed,[177] and broadcast auxiliary radio services.[178] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[179] The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

97. 39 GHz Service. The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[180] An additional size standard for ''very small business'' is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[181] The SBA has approved these small business size standards.[182] The auction of the 2,173

[165] Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order,* 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[166] *Id.* at 11068, paras. 291.

[167] *Id.*

[168] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[169] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice*, 14 FCC Rcd 605 (WTB 1998).

[170] *See* ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' *Public Notice*, 14 FCC Rcd 1085 (WTB 1999).

[171] *See* ''Phase II 220 MHz Service Spectrum Auction Closes,'' *Public Notice,* 14 FCC Rcd 11218 (WTB 1999).

[172] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

[173] *See* 13 CFR 121.201, NAICS code 517212.

[174] *See generally* 13 CFR 121.201.

[175] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at para. 116.

[176] *See* 47 CFR 101 et seq. (formerly, part 21 of the Commission's rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[177] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[178] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[179] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[180] *See* Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183, *Report and Order,* 12 FCC Rcd 18600 (1997), 63 FR 6079 (Feb. 6, 1998).

[182] *Id.*

[182] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998) (VoIP);

Continued

39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices herein.

98. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[183] The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[184] An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[185] The SBA has approved these small business size standards in the context of LMDS auctions.[186] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning that won 119 licenses.

99. 218–219 MHz Service. The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).[187] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[188] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[189] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[190] The SBA has approved of these definitions.[191] At this time, we cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

100. Location and Monitoring Service (LMS). Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[192] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[193] These definitions have been approved by the SBA.[194] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses. We cannot accurately predict the number of remaining licenses that could be awarded to small entities in future LMS auctions.

101. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[195] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[196] The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons.[197] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

102. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.[198] We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an

See Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Hector Barreto, Administrator, Small Business Administration, dated January 18, 2002 (WTB).

[183] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making,* 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[184] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making,* 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[185] *See* Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making,* 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[186] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[187] *See* ''Interactive Video and Data Service (IVDS) Applications Accepted for Filing,'' *Public Notice*, 9 FCC Rcd 6227 (1994).

[188] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330 (1994).

[189] Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service, *Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

[190] *Id.*

[191] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated January 6, 1998.

[192] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15192 para. 20 (1998); *see also* 47 CFR 90.1103.

[193] Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[194] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated February 22, 1999.

[195] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[196] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[197] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[198] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

entity employing no more than 1,500 persons.[199] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

103. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[200] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[201] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

104. Offshore Radiotelephone Service. This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[202] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[203] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[204]

105. Multiple Address Systems (MAS). Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[205] ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[206] The SBA has approved of these definitions.[207] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[208] Seven winning bidders claimed status as small or very small businesses and won 611 licenses.

106. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the ''Cellular and Other Wireless Telecommunications'' definition under the SBA rules. This definition provides that a small entity is any entity employing no more than 1,500 persons.[209] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

107. Incumbent 24 GHz Licensees. This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons.[210] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[211] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[212] Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[213] and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may

[199] 13 CFR 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

[200] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[201] Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

[202] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR 22.1001–22.1037.

[203] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[204] *Id.*

[205] *See* Amendment of the Commission's Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[206] *Id.*

[207] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated June 4, 1999.

[208] *See* ''Multiple Address Systems Spectrum Auction Closes,'' *Public Notice*, 16 FCC Rcd 21011 (2001).

[209] *See* 13 CFR 121.201, NAICS code 517212.

[210] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[211] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322 (issued October 2000).

[212] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[213] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

108. Future 24 GHz Licensees. With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[214] ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[215] The SBA has approved these definitions.[216] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

109. Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[217] In connection with the 1996 MDS auction, the Commission defined—small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[218] The SBA has approved of this standard.[219] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[220] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.[221]

110. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[222] which includes all such companies generating $12.5 million or less in annual receipts.[223] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[224] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[225] Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

111. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities.[226] There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

112. Television Broadcasting. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business.[227] Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' [228] According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [229] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,053 low power television stations (LPTV).[230] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

113. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the

[214] Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz, *Report and Order*, 15 FCC Rcd 16934, 16967, para. 77 (2000) (24 GHz Report and Order); *see also* 47 CFR 101.538(a)(2).

[215] 24 GHz Report and Order, 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[216] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Gary M. Jackson, Assistant Administrator, Small Business Administration, dated July 28, 2000.

[217] Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, *Report and Order*, 10 FCC Rcd 9589, 9593, para. 7 (1995) (MDS Auction R&O).

[218] 47 CFR 21.961(b)(1).

[219] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Bureau, from Gary Jackson, Assistant Administrator for Size Standards, Small Business Administration, dated March 20, 2003 (noting approval of $40 million size standard for MDS auction).

[220] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See* MDS Auction R&O, 10 FCC Rcd at 9608, paragraph 34.

[221] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for ''other telecommunications'' (annual receipts of $12.5 million or less). *See* 13 CFR 121.201, NAICS code 517910.

[222] 13 CFR 121.201, NAICS code 517510.

[223] *Id.*

[224] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4 (issued October 2000).

[225] *Id.*

[226] In addition, the term ''small entity'' under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

[227] *See* OMB, North American Industry Classification System: United States, 1997 at 509 (1997) (NAICS code 513120, which was changed to code 515120 in October 2002).

[228] OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (NAICS code 513120, which was changed to code 51520 in October 2002). This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. See id. at 502–05, NAICS code 51210. Motion Picture and Video Production: code 512120, Motion Picture and Video Distribution, code 512191, Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

[229] ''Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[230] FCC News Release, ''Broadcast Station Totals as of September 30, 2004.''

entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

114. Radio Broadcasting. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[231] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.[232] According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [233] are included.[234] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

115. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[235]

116. The Commission estimates that there are approximately 3,868 FM translators and boosters.[236] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[237]

117. Cable and Other Program Distribution. This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually.[238] According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.[239] Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies herein.

118. Cable System Operators (Rate Regulation Standard). The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[240] The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.[241] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies herein.

119. Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [242] The Commission has determined that there are 65,000,000 subscribers in the United States.[243] Therefore, an operator serving fewer than 650,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[244] Based on available data, the Commission estimates that the number of cable operators serving 650,000 subscribers or fewer, totals 1,450.[245] The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[246] and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

120. Open Video Services. Open Video Service (OVS) systems provide subscription services.[247] The SBA has created a small business size standard for Cable and Other Program

[231] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 513111, which was changed to code 515112 in October 2002).

[232] Id.

[233] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[234] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121(a)(4).

[235] 13 CFR 121.201, NAICS codes 513111 and 513112.

[236] FCC News Release, ''Broadcast Station Totals as of September 30, 2004.''

[237] 15 U.S.C. 632.

[238] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[239] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization)'', Table 4, NAICS code 513220 (issued October 2000).

[240] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, *Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (February 27, 1995).

[241] Paul Kagan Associates, Inc., Cable TV Investor, February 29, 1996 (based on figures for December 30, 1995).

[242] 47 U.S.C. 543(m)(2).

[243] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operator, *Public Notice,* DA 01–158 (January 24, 2001).

[244] 47 CFR 76.901(f).

[245] *See* FCC Announces New Subscriber Count for the Definition of Small Cable Operators, *Public Notice,* DA–01–0158 (released January 24, 2001).

[246] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[247] *See* 47 U.S.C. 573.

Distribution.[248] This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[249] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies herein.

121. Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has defined a small business size standard for Cable and other Program Distribution, consisting of all such companies having annual receipts of no more than $12.5 million.[250] According to Census Bureau data for 1997, there were 1,311 firms in the industry category Cable and Other Program Distribution, total, that operated for the entire year.[251] Of this total, 1,180 firms had annual receipts of $10 million or less, and an additional 52 firms had receipts of $10 million or more but less than $25 million.[252] Thus, under this standard, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies herein.

122. Multichannel Video Distribution and Data Service. MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. No auction has yet been held in this service, although an action has been scheduled for January 14, 2004.[253] Accordingly, there are no licensees in this service.

[248] 13 CFR 121.201, NAICS code 513220 (changed to 517510 in October 2002).

[249] *See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of March 2002).

[250] 13 CFR 121.201, NAICS code 517510.

[251] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''*Establishment and Firm Size (Including Legal Form of Organization),''* Table 4 (issued October 2000).

[252] *Id.*

[253] ''Auctions of Licenses in the Multichannel Video Distribution and Data Service Rescheduled for January 14, 2004,'' *Public Notice,* DA 03–2354 (August 28, 2003).

123. Amateur Radio Service. These licensees are believed to be individuals, and therefore are not small entities.

124. Aviation and Marine Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[254] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[255] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

125. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[256] These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS).[257] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by these rules. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[258] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by these rules.

126. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[259]

[254] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[255] Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998).

[256] 47 CFR part 90.

[257] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR part 95.

[258] 13 CFR 121.201, NAICS Code 517212.

[259] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service

There are a total of approximately 127,540 licensees in these services. Governmental entities [260] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[261]

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

127. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 (''FCC Remittance Advice''), and pay a regulatory fee based on the number of licenses or call signs.[262] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

128. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

129. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[263] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[264] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a Federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[265] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[266]

130. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[267] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

V. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

131. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section III of this FRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

132. *The Omnibus Appropriations Act for FY 2005*, Public Law 108–447, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2005.[268] As noted, we sought comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

133. We have previously used cost accounting data for computation of regulatory fees, but found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact

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(EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[260] 47 CFR 1.1162.

[261] 5 U.S.C. 601(5).

[262] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[263] 47 CFR 1.1164.

[264] 47 CFR 1.1164(c).

[265] Public Law 104–134, 110 Stat. 1321 (1996).

[266] 31 U.S.C. 7701(c)(2)(B).

[267] 47 CFR 1.1166.

[268] 47 U.S.C. 159(a).

on smaller entities. The methodology we are using in this *Report and Order* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

134. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 261, *supra*.

135. *Report to Small Business Administration:* The Commission will send a copy of this *Report and Order*, including a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. The Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

136. *Report to Congress:* The Commission will send a copy of this Final Regulatory Flexibility Analysis (FRFA), along with this *Report and Order*, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Attachment B—Sources of Payment Unit Estimates for FY 2005

In order to calculate individual service fees for FY 2005, we adjusted FY 2004 payment units for each service to more accurately reflect expected FY 2005 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), and Consolidated Database System (CDBS). The industry sources we consulted include, but are not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc, as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2005 estimates with actual FY 2004 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated *exactly*. These include an unknown number of waivers and/or exemptions that may occur in FY 2005 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2005 payment units are based on FY 2004 actual payment units, it does not necessarily mean that our FY 2005 projection is *exactly* the same number as FY 2004. It means that we have either rounded the FY 2005 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau Competition Report estimates.
AM/FM Radio Stations	Based on estimates from Media Services Bureau estimates, adjusted for exemptions, and actual FY 2004 payment units.
UHF/VHF Television Stations	Based on Media Services Bureau estimates and actual FY 2004 payment units.
AM/FM/TV Construction Permits	Based on Media Services Bureau estimates and actual FY 2004 payment units.
LPTV, Translators and Boosters	Based on actual FY 2004 payment units.
Broadcast Auxiliaries	Based on actual FY 2004 payment units.
BRS (formerly MDS/MMDS)	Based on Wireless Telecommunications Bureau estimates and actual FY 2004 payment units.
Cable Television Relay Service (CARS) Stations.	Based on actual FY 2004 payment units.
Cable Television System Subscribers	Based on Media Services Bureau industry estimates of subscribership, and actual FY 2004 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2004 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2005 revenue growth/decline for industry, and projections by the Wireline Competition Bureau.
Earth Stations	Based on actual FY 2004 payment estimates and projected FY 2005 units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data base estimates.
International Bearer Circuits	Based on FY 2004 actual paid units, and adjusted for growth.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau estimates.

ATTACHMENT C.—CALCULATION OF FY 2005 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	FY 2005 payment units	Years	FY 2004 revenue estimate	Pro-rated FY 2005 revenue requirement *	Computed new FY 2005 regulatory fee	Rounded new FY 2005 regulatory fee	Expected FY 2005 revenue
PLMRS (Exclusive use)	3,700	10	340,000	349,068	9	10	370,000
PLMRS (Shared use)	46,000	10	2,300,000	2,361,342	5	5	2,300,000
Microwave	2,600	10	1,500,000	1,540,006	59	60	1,560,000
218–219 MHz (Formerly IVDS)	3	10	1,500	1,540	51	50	1,500
Marine (Ship)	7,000	10	585,000	600,602	9	10	700,000

ATTACHMENT C.—CALCULATION OF FY 2005 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.]

Fee category	FY 2005 payment units	Years	FY 2004 revenue estimate	Pro-rated FY 2005 revenue requirement *	Computed new FY 2005 regulatory fee	Rounded new FY 2005 regulatory fee	Expected FY 2005 revenue
GMRS	21,000	5	375,000	385,001	4	5	525,000
Aviation (Aircraft)	7,400	10	155,000	159,134	2	5	370,000
Marine (Coast)	1,000	10	96,200	98,766	10	10	100,000
Aviation (Ground)	1,600	5	120,000	123,200	15	15	120,000
Amateur Vanity Call Signs	7,600	10	162,119	166,443	2.19	2.19	166,443
AM Class A	66	1	198,375	203,666	3,086	3,075	202,950
AM Class B	1,592	1	2,421,075	2,485,646	1,561	1,550	2,467,600
AM Class C	956	1	841,500	863,943	904	900	860,400
AM Class D	1,769	1	2,784,800	2,859,072	1,616	1,625	2,874,625
FM Classes A, B1 & C3	3,045	1	5,715,500	5,980,390	1,964	1,975	6,013,875
FM Classes B, C, C0, C1 & C2	2,963	1	7,026,150	7,321,585	2,471	2,475	7,333,425
AM Construction Permits	113	1	33,945	34,850	308	310	35,030
FM Construction Permits [1]	98	1	267,300	53,929	550	550	53,900
Satellite TV	123	1	128,100	131,516	1,069	1,075	132,225
Satellite TV Construction Permit	3	1	1,560	1,602	534	535	1,605
VHF Markets 1–10	43	1	2,596,125	2,665,365	61,985	61,975	2,664,925
VHF Markets 11–25	61	1	2,654,400	2,725,194	44,675	44,675	2,725,175
VHF Markets 26–50	72	1	2,246,475	2,306,389	32,033	32,025	2,305,800
VHF Markets 51–100	118	1	2,161,725	2,219,379	18,808	18,800	2,218,400
VHF Remaining Markets	211	1	951,750	977,134	4,631	4,625	975,875
UHF Construction Permits	9	1	27,900	28,644	3,183	3,175	28,575
UHF Markets 1–10	84	1	1,599,750	1,682,187	20,026	20,025	1,682,100
UHF Markets 11–25	79	1	1,310,175	1,384,889	17,530	17,525	1,384,475
UHF Markets 26–50	115	1	1,088,100	1,156,891	10,060	10,050	1,155,750
UHF Markets 51–100	162	1	943,500	993,971	6,136	6,125	992,250
UHF Remaining Markets	181	1	301,950	310,003	1,713	1,725	312,225
UHF Construction Permits [1]	31	1	192,950	53,475	1,725	1,725	53,475
Broadcast Auxiliaries	25,000	1	250,000	256,668	10	10	250,000
LPTV/Translators/Boosters	2,900	1	1,116,500	1,146,277	395	395	1,145,500
CARS Stations	900	1	135,000	138,001	154	154	139,500
Cable TV Systems	65,000,000	1	45,500,000	46,713,502	0.719	0.72	46,800,000
Interstate Telecommunication Service Providers	54,000,000,000	1	127,530,000	130,931,273	0.002425	0.00243	131,220,000
CMRS Mobile Services (Cellular/Public Mobile)	179,000,000	1	38,250,000	39,565,080	0.221	0.22	39,380,000
CMRS Messaging Services	11,200,000	1	1,160,000	896,000	0.08	0.08	896,000
BRS [2]	1,800	1	432,000	455,400	253	255	459,000
LMDS [3]	330	1	91,800	83,490	253	255	84,150
International Bearer Circuits	5,300,000	1	7,056,000	7,244,186	1.37	1.37	7,261,000
International Public Fixed	1	1	1,750	1,797	1,797	1,800	1,800
Earth Stations	3,400	1	680,000	698,136	205	205	697,000
International HF Broadcast	5	1	3,725	3,824	765	765	3,825
Space Stations (Geostationary)	81	1	8,829,975	9,065,474	111,919	111,925	9,065,925
Space Stations (Non-Geostationary	6	1	657,000	674,522	112,420	112,425	674,550
Total Estimated Revenue to be Collected			272,821,674	280,099,050			280,765,853
Total Revenue Requirement			272,958,000	280,098,000			280,098,000
Difference			(136,326)	1,050			667,853

*1,02615787 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 108–7 and 47 U.S.C. 159(a)(2)).

[1] The FM Construction Permit and UHF Construction Permit revenues were adjusted so that the construction permit fee is no higher than the level of the lowest licensed fee for that class of service.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands et al., *Report & Order and Further Notice of Proposed Rulemaking,* 19 FCC Rcd 14165 (2004).

[3] Although we are tracking BRS (formerly MDS/MMDS) and LMDS separately in terms of payment units, the FY 2005 regulatory fee for BRS and LMDS is calculated by combining the units and the "Pro-Rated Revenue Requirements" of both BRS and LMDS.

ATTACHMENT D.—FY 2005 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	60
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	50
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.19
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.22
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	255
Local Multipoint Distribution Service (47 CFR, part 101)	255
AM Radio Construction Permits	310
FM Radio Construction Permits	550
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	61,975
Markets 11–25	44,675
Markets 26–50	32,025
Markets 51–100	18,800
Remaining Markets	4,625
Construction Permits	3,175
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	20,025
Markets 11–25	17,525
Markets 26–50	10,050
Markets 51–100	6,125
Remaining Markets	1,725
Construction Permits	1,725
Satellite Television Stations (All Markets)	1,075
Construction Permits—Satellite Television Stations	535
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	395
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	155
Cable Television Systems (per subscriber) (47 CFR part 76)	.72
Interstate Telecommunication Service Providers (per revenue dollar)	.00243
Earth Stations (47 CFR part 25)	205
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	111,925
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	112,425
International Bearer Circuits (per active 64KB circuit)	1.37
International Public Fixed (per call sign) (47 CFR part 23)	1,800
International (HF) Broadcast (47 CFR part 73)	765

FY 2005 SCHEDULE OF REGULATORY FEES (CONTINUED)

FY 2005 radio station regulatory fees

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 and C3	FM classes B, C, C0, C1 and C2
<=25,000	625	475	375	450	550	725
25,001–75,000	1,225	925	550	675	1,125	1,250
75,001–150,000	1,825	1,150	750	1,125	1,550	2,300
150,001–500,000	2,750	1,950	1,125	1,350	2,375	3,000
500,001–1,200,000	3,950	2,975	1,875	2,250	3,750	4,400
1,200,001–3,000,00	6,075	4,575	2,825	3,600	6,100	7,025
>3,000,000	7,275	5,475	3,575	4,500	7,750	9,125

Attachment E—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[269] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3 [270]. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[271] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

Attachment F

Parties Filing Comments on the Notice of Proposed Rulemaking

Blooston, Mordkofsky, Dickens, Duffy & Prendergast (''BMDDP'').
Cingular Wireless LLC (''Cingular'').
National Cable & Telecommunications Association (''NCTA'').
Satellite Industry Association (''SIA'').
Tyco Communications (US) Inc. (''Tyco'').
XO Communications, Inc. (''XO'').

Parties Filing Reply Comments

American Cable Association (''ACA'').
Cellular Telecommunications and Internet Association (''CTIA'').
DIRECTV, Inc. and EchoStar Satellite (''DirecTV & Echostar'').
Level 3 Communications (''Level 3'').
Tyco Communications (US) Inc. (''Tyco'').

Parties Filing a Notice of Oral Ex Parte Presentation

Tyco Telecommunications (''Tyco Telecom''), filed by Harris, Wiltshire & Grannis, LLP.

Satellite company representatives from Intelsat, PanAmSat, and SES Americom, Filed by Hogan & Hartson, LLP.

XO Communications (''XO''), Filed by Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, PC.

ATTACHMENT G.—FY 2004 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	50
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	50
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.25
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/ MDS) (per call sign) (47 CFR part 21)	270
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	270
AM Radio Construction Permits	465
FM Radio Construction Permits	1,650
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	60,375
Markets 11–25	41,475
Markets 26–50	29,175
Markets 51–100	17,575

[269] 47 CFR 73.150 and 73.152.

[270] *See Map of Estimated Effective Ground Conductivity in the United States*, 47 CFR 73.190 Figure R3.

[271] 47 CFR 73.313.

ATTACHMENT G.—FY 2004 SCHEDULE OF REGULATORY FEES—Continued

Fee category	Annual regulatory fee (U.S. $'s)
Remaining Markets	4,050
Construction Permits	4,650
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	17,775
Markets 11–25	16,175
Markets 26–50	9,300
Markets 51–100	5,550
Remaining Markets	1,650
Construction Permits	5,675
Satellite Television Stations (All Markets)	1,050
Construction Permits—Satellite Television Stations	520
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	385
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	135
Cable Television Systems (per subscriber) (47 CFR part 76)	.70
Interstate Telecommunication Service Providers (per revenue dollar)	.00218
Earth Stations (47 CFR part 25)	200
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	114,675
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	131,400
International Bearer Circuits (per active 64KB circuit)	2.52
International Public Fixed (per call sign) (47 CFR part 23)	1,750
International (HF) Broadcast (47 CFR part 73)	745

FY 2004 SCHEDULE OF REGULATORY FEES (CONTINUED)

FY 2004 Radio station regulatory fees

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C0, C1 & C2
<–25,000	600	450	350	425	525	675
25,001–75,000	1,200	900	525	625	1,050	1,175
75,001–150,000	1,800	1,125	700	1,075	1,450	2,200
150,001–500,000	2,700	1,925	1,050	1,275	2,225	2,875
500,001–1,200,000	3,900	2,925	1,750	2,125	3,550	4,225
1,200,001–3,000,00	6,000	4,500	2,625	3,400	5,775	6,750
>3,000,000	7,200	5,400	3,325	4,250	7,350	8,775

Statement of Commissioner Michael Copps, Concurring; Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2005

As in past years, I concur to emphasize that the Commission should consider initiating a proceeding to address when or how it would adjust the regulatory fees pursuant to section 9(b)(3) of the Act. As technology advances and our regulatory activities change, we must continue to look for ways to improve our regulatory fee methodology to ensure that we continue to comply fully with the Act's requirements.

Statement of Commissioner Jonathan Adelstein Approving in Part, Concurring in Part; Re: Assessment and Collection of Regulatory Fees for Fiscal Year 2005; MD Docket No. 05–59

As in years past, I must concur to portions of our Regulatory Fee Order because I remain troubled with the Commission's inability to consider changes that undoubtedly occur from time to time in the costs of regulatory fees for individual services. I encourage the Commission to continue to improve its regulatory fee assessment processes so that in the future we are more able to make these adjustments as appropriate.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303, 309.

■ 2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount [1]	Address
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90):		
(a) New, Renew/Mod (FCC 601 & 159)	$10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
220 MHz Nationwide:		
(a) New, Renew/Mod (FCC 601 & 159)	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
2. Microwave (47 CFR 101) (Private):		
(a) New, Renew/Mod (FCC 601 & 159)	60.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	60.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	60.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	60.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
3. 218–219 MHz Service:		
(a) New, Renew/Mod (FCC 601 & 159)	50.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	50.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	50.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	50.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
4. Shared Use Services, Land Mobile (Frequencies Below 470 MHz—except 220 MHz):		
(a) New, Renew/Mod (FCC 601 & 159)	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 601 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
General Mobile Radio Service:		
(a) New, Renew/Mod (FCC 605 & 159)	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 605 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Rural Radio (Part 22):		
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159).	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Marine Coast:		
(a) New Renewal/Mod (FCC 601 & 159)	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Renewal Only (FCC 601 & 159)	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Aviation Ground:		
(a) New, Renewal/Mod (FCC 601 & 159)	15.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Renewal Only (FCC 601 & 159)	15.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(c) Renewal Only (Electronic Filing) (FCC 601 & 159)	15.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Marine Ship:		
(a) New, Renewal/Mod (FCC 605 & 159)	10.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 605 & 159)	10.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Aviation Aircraft:		
(a) New, Renew/Mod (FCC 605 & 159)	5.00	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
(c) Renewal Only (FCC 605 & 159)	5.00	FCC, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	5.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
5. Amateur Vanity Call Signs		
(a) Initial or Renew (FCC 605 & 159)	2.19	FCC, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(b) Initial or Renew (Electronic Filing) (FCC 605 & 159)	2.19	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
6. CMRS Mobile Services (per unit) (FCC 159)	[2] .22 &	FCC, P.O. Box 358835, Pittsburgh, PA 15251–5835.
7. CMRS Messaging Services (per unit) (FCC 159)	[3] .08	FCC, P.O. Box 358835, Pittsburgh, PA 15251–5835.
8. Multipoint Distribution (Includes MMDS and MDS)	255	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251–5835.
9. Local Multipoint Distribution Service	255	FCC, Multipoint, P.O. Box 358835, Pittsburgh, PA 15251–5835.

[1] Note that "small fees" are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by the 5- or 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. It should be further noted that application fees may also apply as detailed in § 1.1102.

[2] These are standard fees that are to be paid in accordance with § 1.1157(b).

[3] These are standard fees that are to be paid in accordance with § 1.1157(b).

■ 3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Radio [AM and FM] (47 CFR part 73)	Fee amount	Address
1. *AM Class A*		
<=25,000 population	$625	FCC, Radio, P.O. Box 358835, Pittsburgh, PA 15251–5835.
25,001–75,000 population	1,225	
75,001–150,000 population	1,825	
150,001–500,000 population	2,750	
500,001–1,200,000 population	3,950	
1,200,001–3,000,000 population	6,075	
>3,000,000 population	7,275	
2. *AM Class B*		
<=25,000 population	475	
25,001–75,000 population	925	
75,001–150,000 population	1,150	
150,001–500,000 population	1,950	
500,001–1,200,000 population	2,975	
1,200,001–3,000,000 population	4,575	
>3,000,000 population	5,475	
3. *AM Class C*		
>25,000 population	375	
25,001–75,000 population	550	
75,001–150,000 population	750	
150,001–500,000 population	1,125	
500,001–1,200,000 population	1,875	
1,200,001–3,000,000 population	2,825	
>3,000,000 population	3,575	
4. *AM Class D*		
<=25,000 population	450	
25,001–75,000 population	675	
75,001–150,000 population	1,125	
150,001–500,000 population	1,350	
500,001–1,200,000 population	2,250	
1,200,001–3,000,000 population	3,600	
>3,000,000 population	4,500	
5. AM Construction Permit	310	
6. *FM Classes A, B1 and C3*		
<=25,000 population	550	
25,001–75,000 population	1,125	
75,001–150,000 population	1,550	
150,001–500,000 population	2,375	
500,001–1,200,000 population	3,750	
1,200,001–3,000,000 population	6,100	
>3,000,000 population	7,750	
7. *FM Classes B, C, C0, C1 and C2*		
<=25,000 population	725	
25,001–75,000 population	1,250	
75,001–150,000 population	2,300	
150,001–500,000 population	3,000	
500,001–1,200,000 population	4,400	
1,200,001–3,000,000 population	7,025	
>3,000,000 population	9,125	
8. FM Construction Permits	550	
TV (47 CFR part 73), VHF Commercial:		
1. Markets 1 thru 10	61,975	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25	44,675	
3. Markets 26 thru 50	32,025	
4. Markets 51 thru 100	18,800	
5. Remaining Markets	4,625	
6. Construction Permits	3,175	
UHF Commercial:		
1. Markets 1 thru 10	20,025	FCC, UHFCommercial, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25	17,525	
3. Markets 26 thru 50	10,050	
4. Markets 51 thru 100	6,125	
5. Remaining Markets	1,725	
6. Construction Permits	1,725	
Satellite UHF/VHF Commercial:		
1. All Markets	1,075	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits	535	

Radio [AM and FM] (47 CFR part 73)	Fee amount	Address
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR part 74)	395	FCC, Low Power, P.O. Box 358835, Pittsbugh, PA 15251–5835.
Broadcast Auxiliary	10	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.

■ 4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio facilities:		
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159).	$60.00	FCC, P.O. Box 358994, Pittsburgh, PA 15251–5994.
Carriers:		
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A).	.00243	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA 15251–5835.

■ 5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Television Relay Service	$155	FCC, Cable, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Cable TV System (per subscriber)	.72	

■ 6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities:		
1. International (HF) Broadcast	$765	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. International Public Fixed	1,800	FCC, International, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Space Stations (Geostationary Orbit)	111,925	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Space Stations (Non-Geostationary Orbit)	112,425	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Earth Stations, Transmit/Receive & Transmit Only (per authorization or registration).	205	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Carriers, International Bearer Circuits (per active 64KB circuit or equivalent.	1.37	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA 15251–5835.

[FR Doc. 05–14267 Filed 7–20–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 230

[Docket No. FRA 2005–20044, Notice No. 2]

RIN 2130–AB64

Inspection and Maintenance Standards for Steam Locomotives

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: On April 19, 2005, FRA published a notice of proposed rulemaking (NPRM) proposing to correct an inadvertent, small omission from FRA Form 4 (Boiler Specification Card) in the Steam Locomotive Inspection and Maintenance Standards. The form is used to record information about inspections of steam locomotive boilers. FRA received two comments supporting the adoption of the proposed rule. Therefore, FRA adopts the proposed rule as a final rule.

DATES: Effective Date: This rule is effective August 22, 2005.

FOR FURTHER INFORMATION CONTACT: George Scerbo, Motive Power and Equipment Safety Specialist, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590, (202) 493–6249, *George.Scerbo@fra.dot.gov*; or Melissa L. Porter, Trial Attorney, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590, (202) 493–6034, *Melissa.Porter@fra.dot.gov*.

SUPPLEMENTARY INFORMATION: On November 17, 1999, FRA published a final rule revising the agency's inspection and maintenance standards for steam locomotives (49 CFR part 230) (64 FR 62828). Appendix C to part 230 contains forms that railroads subject to the rule are required to complete. On FRA Form 4 entitled ''Boiler Specification Card,'' FRA inadvertently omitted three lines in the

''Calculations'' section that should have been included to record the shearing stress on rivets. Because the purpose of Form 4 is to document for FRA the current condition of the boiler and to keep up-to-date documentation of all repairs that have been made to the boiler, the omitted language is necessary on the form so that the current condition of the boiler can be documented accurately. The omitted language is as follows:

''Shearing stress on rivets:

Greatest shear stress on rivets in longitudinal seam______psi Location (course #)______; Seam Efficiency___''

On April, 19, 2005, FRA published an NPRM proposing to add the omitted language to Form 4. (70 FR 20337). Comments were due on May 19, 2005. FRA received two comments supporting the addition of the language to Form 4, but requesting clarification about whether the rule will only apply prospectively.

Because FRA did not receive any adverse, substantive comments, FRA is correcting this oversight by adding the language to Form 4 as proposed in the notice of proposed rulemaking.

Analysis of Comments

FRA asked for comment on the proposed changes to Form 4 and received comments from Union Pacific Railroad Company (UP) and the Association of Railway Museums (ARM). Both commenters support adoption of the proposed rule provided that the changes to Form 4 apply prospectively from the effective date of this final rule. UP and ARM maintain that the rule should not require railroads to revise or update existing Form 4's to include the ''shearing stress on rivets'' information until such time as 49 CFR part 230 requires railroads to prepare a new or updated Form 4 (*e.g.*, in connection with a 1472 service day inspection under section 230.17).

FRA agrees that the change to Form 4 should apply prospectively. In this regard, railroads are not required to update or revise current Form 4's that were prepared prior to the effective date of this final rule until such time as a new or updated Form 4 is otherwise required by the rule. Form 4's that are prepared after the effective date of this final rule must contain the ''shearing stress on rivets'' information.

Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation. The economic impact of the final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. This rule corrects a minor omission from the final rule. Therefore, FRA certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

C. Federalism

This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 13132, preparation of a Federalism assessment as not warranted.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Compliance With the Unfunded Mandates Reform Act of 1995

The final rule issued today will not result in the expenditure, in the aggregate, of $120,700,000 or more in any one year by State, local, or Indian tribal governments, or the private sector, and thus preparation of a statement was not required.

F. Environmental Assessment

There will be no significant environmental impacts associated with this final rule.

G. Energy Impact

According to definitions set forth in Executive Order 13211, there will be no significant energy action as a result of the issuance of this final rule.

List of Subjects in 49 CFR Part 230

Steam locomotives, Railroad safety, Penalties, Reporting and recordkeeping requirements.

The Final Rule

■ In consideration of the foregoing, FRA is amending chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 230—[AMENDED]

■ 1. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20701, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Appendix C to part 230 is amended by revising ''FRA Form 4'' to read as follows:

Appendix C to Part 230–FRA Inspection Forms

* * * * *

BILLING CODE 4910–06–P

FRA Form 4

BOILER SPECIFICATION CARD

Locomotive No.____________; Boiler No.____________________; Date built____________________
Boiler built by:____
Owned by:____
Operated by:____
Type of boiler:__________________________; Dome, where located:__________________________

BOILER SURVEY DATA

Where **condition** is called for, use: **New -** New material at the time of the boiler survey; **Good -** Little or no wear and/or corrosion; **Fair -** Obvious wear and/or corrosion.

Boiler Shell Sheets

Material:	Type of Material (wrought iron, carbon steel, or alloy steel)	Carbon Content	Condition
1st course (front)	__________	__________	__________
2nd course	__________	__________	__________
3rd course	__________	__________	__________
Rivets	__________	n/a	n/a

Documentation of how material was determined shall be attached to this form.

Measurements:		At Seam	Thinnest		
Front flue sheet,	thickness	n/a	________		
1st course,	thickness	________,	________,	ID__________	,ID__________
2nd course,	thickness	________,	________,	ID__________	,ID__________
3rd course,	thickness	________,	________,	ID__________	,ID__________

When courses are not cylindrical give ID at each end

Is boiler shell circular at all points?__________

If shell is flattened, state location and amount______________________________

Are all flattened areas of shell stayed adequately for the pressure allowed by this form?______________

Water Space at Mud Ring: Sides________, Front________, Back________

Width of water space at sides of fire box measured at center line of boiler: Front________, Back_________

Firebox and Wrapper Sheets

Firebox sheets:	Thickness	Material	Condition
Rear flue sheet	________	__________	__________
Crown	________	__________	__________
Sides	________	__________	__________
Door	________	__________	__________
Combustion chamber	________	__________	__________
Inside throat	________	__________	__________
Wrapper sheets:			
Throat	________	__________	__________
Back head	________	__________	__________
Roof	________	__________	__________
Sides	________	__________	__________

Steam Dome

Dome is made of ____________pieces (not including seam welts, if any), Top opening diameter___________
Middle cylindrical portion - ID__________ , Opening in boiler shell, longitudinally - ______________________

Dome sheets:	Thickness	Material	Condition
Base	_________	____________________	________________________
Middle cylindrical portion	_________	____________________	________________________
Top	_________	____________________	________________________
Lid	_________	____________________	________________________
Boiler shell liner for steam dome opening:	_________	____________________	________________________

Is liner part of longitudinal seam?____________

Arch Tubes, Flues, Circulators, Thermic Siphons, Water Bar Tubes, Superheaters, and Dry Pipe

Arch tubes: OD___________, wall thickness___________; number __________; condition________________

Flues:
OD________, wall thickness_________, length_____________; number_________; condition______________
OD________, wall thickness_________, length_____________; number_________; condition______________
OD________, wall thickness_________, length_____________; number_________; condition______________

Circulators: OD___________, wall thickness___________; number __________; condition________________

Thermic siphons: number______; plate thickness____________; condition________________
neck OD____________, neck thickness____________; condition________________

Water bar tubes: OD__________, wall thickness____________

Superheater units directly connected to boiler with no intervening valve:
Type______________, Tube OD_______, wall thickness___________; number________; condition__________

Dry pipe subject to pressure:
OD_________, wall thickness__________, material________________; condition________________________

Stay Bolts, Crown Bar Rivets, and Braces

Stay bolts:
Smallest crown stay diameter_________, avg. spacing__________X__________; condition__________________
Smallest stay bolt diameter_________, avg. spacing__________X__________ ; condition__________________
Smallest combustion chamber stay bolt dia.________,
avg. spacing__________X__________; condition_____________________

Measurement at smallest diameter

Crown bar bolts & rivets:
Roof sheet rivets, smallest dia._______, ave. spacing_________X_________; condition_______________
Roof sheet bolts, smallest dia._______, ave. spacing_________X_________; condition_______________
Crown sheet rivets, smallest dia.________, ave. spacing_________X_________; condition__________________
Crown sheet bolts, smallest dia.________, ave. spacing_________X_________;condition__________________

Braces:

	Number	Total Area Stayed	Total Cross Sectional Area of Braces Actual	Equivalent Direct Stay
Backhead	_______	_______________	______________	_________________________
Throat sheet	_______	_______________	______________	_________________________
Front tube sheet	_______	_______________	______________	_________________________
______________	_______	_______________	______________	_________________________
______________	_______	_______________	______________	_________________________

Safety Valves, Heating Surface, and Grate Area

Safety valves: Total number of safety valves on locomotive____________

Valve Size	Manufacturer	No. valves of this size and manufacture
__________	___________________________	__________________________________
__________	___________________________	__________________________________
__________	___________________________	__________________________________
__________	___________________________	__________________________________

Heating Surface:

Heating surface, as part of a circulating system in contact on one side with water or wet steam being heated and on the other side with gas or refractory being cooled, shall be measured on the side receiving heat.

Firebox and Combustion Chamber	___________________	square feet
Flue Sheets (less flue ID areas)	___________________	square feet
Flues	___________________	square feet
Circulators	___________________	square feet
Arch Tubes	___________________	square feet
Thermic Siphons	___________________	square feet
Water Bar Tubes	___________________	square feet
Superheaters (front end throttle only)	___________________	square feet
Other	___________________	square feet
Total Heating Surface	___________________	square feet

Grate area:___________square feet

Water Level Indicators, Fusible Plugs, and Low Water Alarms

Height of lowest reading of gauge glasses above crown sheet:_________________ _________________

Height of lowest reading of gauge cocks above crown sheet:____________

Is boiler equipped with fusible plug(s)? _______________, number________________________

Is boiler equipped with low water alarm(s)? _______________, number________________________

Calculations

Staybolt stresses:

Stay bolt under greatest load, maximum stress ________________psi
Location____

Crown stay, crown bar rivet, or crown bar bolt under greatest load, max. stress ________________psi
Location____

Combustion chamber stay bolt under greatest load, maximum stress ________________psi
Location____

Braces:

Round or rectangular brace under greatest load, maximum stress ________________psi
Location____

Gusset brace under greatest load, maximum stress ________________psi
Location____

Shearing stress on rivets:

Greatest shear stress on rivets in longitudinal seam ________________psi
Location (course #)________________ ; Seam Efficiency___________

Boiler shell plate tension:

Greatest tension on net section of plate in longitudinal seam ________________psi
Location (course #)________________ ; Seam Efficiency___________

Boiler plate and components, minimum thickness required @ tensile strength:

Front tube sheet	_________@_________	Rear flue sheet	________@________
1st course at seam	_________@_________	1st course not at seam	________@________
2nd course at seam	_________@_________	2nd course not at seam	________@________
3rd course at seam	_________@_________	3rd course not at seam	________@________
Roof sheet	_________@_________	Crown sheet	________@________
Side wrapper sheets	_________@_________	Firebox side sheets	________@________
Back head	_________@_________	Door sheet	________@________
Throat sheet	_________@_________	Inside throat sheet	________@________
Combustion chamber	_________@_________	Dome, top	________@________
Dome, middle	_________@_________	Dome, base	________@________
Arch tubes	_________@_________	Dome, lid	________@________
Water bar tubes	_________@_________	Thermic siphons	________@________
Dry pipe	_________@_________	Circulators	________@________

Notes.
1. **If tensile strength used is greater than 50,000 psi for steel or greater than 45,000 psi for wrought iron, supporting documentation must be furnished.**
2. **Any shell dimension less than 1/4" in thickness may not be adequate for support of or by other structures, particularly where threads or staybolts are concerned. Applicable codes should be consulted.**

Boiler Steam Generating Capacity: ________________________pounds per hour

The following may be used as a guide for estimating steaming capacity:

Pounds of Steam Per Hour Per Square Foot of Heating Surface:

Hand fired	8 lbs. per hr.
Stoker fired	10 lbs. per hr.
Oil, gas or pulverized fuel fired	14 lbs. per hr.

Record of Alterations

Description of Alteration	Date of Alteration

Record of Waivers

Waiver No.	Section No. Affected	Scope and Content of Waiver

Calculations done by:___________________________; Verified by:_______________________________

Data used to verify the foregoing specifications is current and accurate. Based upon the information contained in this document and all necessary calculations, this boiler of Locomotive (Initial & number)____________ is safe for a working pressure of _________psi.

___________________________ Date__________; ___________________________ Date__________

Locomotive Owner **Locomotive Operator**

Make working sketch here or attach drawing of longitudinal and circumferential seams used in shell of boiler, indicating on which courses used and give calculated efficiency of weakest longitudinal seam.

* * * * *

Issued in Washington, DC on July 11, 2005.

Joseph H. Boardman,

Administrator, Federal Railroad Administration.

[FR Doc. 05–14334 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–06–C

Proposed Rules

Federal Register
Vol. 70, No. 139
Thursday, July 21, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21909; Directorate Identifier 2005–NM–059–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Aerospatiale Model ATR72 airplanes. This proposed AD would require a one-time general visual inspection for contamination of the surface of the upper arms of the main landing gear (MLG) secondary side brace assemblies; and repetitive eddy current inspections for cracking of the upper arms, and related specified and corrective actions if necessary. This proposed AD also would mandate eventual replacement of aluminum upper arms with steel upper arms, which would end the repetitive inspections. This proposed AD is prompted by two reports of rupture of the upper arm of the MLG secondary side brace due to fatigue cracking. We are proposing this AD to prevent cracking of the upper arms of the secondary side brace assemblies of the MLG, which could result in collapse of the MLG during takeoff or landing, damage to the airplane, and possible injury to the flightcrew and passengers.

DATES: We must receive comments on this proposed AD by August 22, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21909; the directorate identifier for this docket is 2005–NM–059–AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ‘‘Docket No. FAA–2005–21909; Directorate Identifier 2005–NM–059–AD’’ at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Aerospatiale Model ATR72 airplanes. The DGAC advises that there were two reports of rupture of the upper arm of the main landing gear (MLG) secondary side brace assembly. Fatigue cracking has been determined to be the cause of the ruptures. This cracking, if not corrected, could result in collapse of the MLG during takeoff or landing, damage to the airplane, and possible injury to the flightcrew and passengers.

Relevant Service Information

Messier-Dowty has issued Special Inspection Service Bulletin 631–32–178, Revision 1, dated September 30, 2004. The service bulletin describes procedures for, among other things, a one-time general visual inspection for contamination of the surface of the upper arms of the MLG secondary side brace assemblies, and an eddy current inspection for cracking of the upper arms. The service bulletin also recommends sending an inspection report to Messier-Dowty.

Aerospatiale has issued Avions de Transport Regional Service Bulletin ATR72–32–1046, Revision 1, dated October 7, 2004. The service bulletin contains no Accomplishment Instructions, but describes procedures for replacing the upper arms of the MLG secondary side brace assemblies. The service bulletin refers to Messier-Dowty Service Bulletin 631–32–183, dated October 6, 2004, as the source of service information for accomplishing the replacement. Service Bulletin 631–32–183 describes procedures for replacing aluminum upper arms of the MLG secondary side brace assemblies with steel upper arms, and engraving a new suffix on the identification plate on the assembly.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–164, dated October 13, 2004, to ensure the continued airworthiness of these airplanes in France.

The French airworthiness directive refers to Messier-Bugatti Service Bulletin 631–32–085, dated August 21, 1992, as the source of service information for replacing the press-fitted ball cages of the lower and upper arms of the MLG secondary side brace assemblies with ball cages that are shrink-fitted and bonded with adhesive. For airplanes on which this replacement has been accomplished, the compliance time for the replacement of the aluminum upper arms is extended.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in Avions de Transport Regional Service Bulletin ATR72–32–1046, Revision 1; Messier-Dowty Special Inspection Service Bulletin 631–32–178, Revision 1; and Messier-Dowty Service Bulletin 631–32–183; described previously; except as discussed under ''Differences Between the Proposed AD and Messier-Dowty Special Inspection Service Bulletin 631–32–178.'' In addition, this proposed AD would require, for replacement of aluminum upper arms, an eddy current inspection and investigative or corrective actions. Replacement with steel arms would end the repetitive inspections, and replacement with aluminum arms would require repeating the eddy current inspections.

Differences Among Proposed AD, French Airworthiness Directive, and Messier-Dowty Service Information

Although the French airworthiness directive requires replacing any defective upper arm of the MLG secondary side brace assemblies with a new or serviceable aluminum arm, or a new steel arm, there are no procedures specified in Service Bulletin 631–32–183 for replacing the defective arm with an aluminum arm. The service bulletin does reference the ATR Component Maintenance Manual (CMM), Chapter 32–18–41, Revision 3, dated September 30, 2002, for procedures for replacing the affected arm with a new steel arm. Therefore, this proposed AD will reference the CMM for procedures for replacement of any defective aluminum upper arm with a new or serviceable aluminum upper arm. Chapter 32–18–41 provides procedures for replacement of affected upper arms with either steel or aluminum upper arms. This difference has been coordinated with the DGAC.

Special Inspection Service Bulletin 631–32–178, Revision 1, recommends sending an inspection report to Messier-Dowty, but this proposed AD does not contain that requirement.

Special Inspection Service Bulletin 631–32–178, Revision 1, refers only to a ''visual inspection'' for contamination of the surface. We have determined that the procedures in the service bulletin should be described as a ''general visual inspection.'' A note has been included in this AD to define this type of inspection.

Costs of Compliance

This proposed AD would affect about 18 airplanes of U.S. registry.

The proposed initial and repetitive inspections would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspections for U.S. operators is $1,170, or $65 per airplane, per inspection cycle.

The proposed replacement would take about 4 work hours per airplane (2 work hours per upper arm), at an average labor rate of $65 per work hour. Required parts would cost about $4,948 per airplane ($2,474 per upper arm). Based on these figures, the estimated cost of the proposed replacement for U.S. operators is $93,744, or $5,208 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Aerospatiale: Docket No. FAA–2005–21909; Directorate Identifier 2005–NM–059–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 22, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Aerospatiale Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, certificated in any category; except airplanes that have received ATR Modification 5522 in production.

Unsafe Condition

(d) This AD was prompted by two reports of rupture of the upper arm of the main landing gear (MLG) secondary side brace assembly due to fatigue cracking. We are issuing this AD to prevent cracking of the upper arms of the secondary side brace assemblies of the MLG, which could result in collapse of the MLG during takeoff or landing, damage to the airplane, and possible injury to the flightcrew and passengers.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspections

(f) At the latest of the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD: Accomplish a general visual inspection for contamination of the surface of the upper arms of the MLG secondary side brace assemblies, and an eddy current inspection for cracking of the upper arms by doing all the actions specified in Parts A and B of the Accomplishment Instructions of Messier-Dowty Special Inspection Service Bulletin 631–32–178, Revision 1, dated September 30, 2004. Repeat the eddy current inspection at intervals not to exceed 800 flight cycles until accomplishment of paragraph (h) of this AD.

(1) Before the accumulation of 4,000 total flight cycles on the secondary side brace.

(2) Before the accumulation of 800 flight cycles on the secondary side brace since overhauled.

(3) Within 200 flight cycles after the effective date of this AD.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Related Specified and Corrective Actions

(g) If any cracking is found during any inspection required by paragraph (f) of this AD: Before further flight, replace the affected upper arm of the MLG secondary side brace assembly as specified in paragraph (g)(1) or (g)(2) of this AD.

(1) Replace the aluminum upper arm of the MLG secondary side brace assembly with a steel upper arm by doing the applicable actions specified in the Accomplishment Instructions of Messier-Dowty Service Bulletin 631–32–183, dated October 6, 2004. This replacement ends the repetitive inspections required by paragraph (f) of this AD for that side brace only.

(2) Replace the aluminum upper arm of the MLG secondary side brace assembly with a new or serviceable aluminum upper arm in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (or its delegated agent). ATR Component Maintenance Manual, Chapter 32–18–41, Revision 3, dated September 30, 2002, is one approved method. Accomplish a general visual inspection for contamination of the surface of the upper arm before the accumulation of 4,000 total flight cycles on the upper arm, and if cracks are found, before further flight, replace the upper arm with a steel upper arm as required by paragraph (g)(1) of this AD. If no cracks are found, repeat the eddy current inspection thereafter at intervals not to exceed 800 flight cycles until accomplishment of paragraph (h) of this AD.

Terminating Action

(h) Replace all aluminum upper arms of the MLG secondary side brace assembly with steel upper arms by doing all the applicable actions in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin 631–32–183, dated October 6, 2004; at the applicable time specified in paragraph (h)(1), (h)(2), (h)(3), or (h)(4) of this AD. Accomplishing this replacement ends the repetitive inspections required by paragraph (f) of this AD.

(1) For airplanes on which any upper arm has been overhauled before the effective date of this AD and on which Messier-Bugatti Service Bulletin 631–32–085, dated August 21, 1992, has not been accomplished, as of the effective date of this AD: Within 15,000 flight cycles or 96 months, whichever is first, since overhaul on the affected upper arm.

(2) For airplanes on which any upper arm has been overhauled before the effective date of this AD and on which Messier-Bugatti Service Bulletin 631–32–085, dated August 21, 1992, has been accomplished, as of the effective date of this AD: Within 18,000 flight cycles or 96 months, whichever is first, since overhaul on the affected upper arm.

(3) For airplanes on which any upper arm has not been overhauled and on which Messier-Bugatti Service Bulletin 631–32–085, dated August 21, 1992, has not been accomplished, as of the effective date of this AD: Before the accumulation of 15,000 total flight cycles on an upper arm since new, or within 96 months on an upper arm since new, whichever is first.

(4) For airplanes on which any upper arm has not been overhauled and on which Messier-Bugatti Service Bulletin 631–32–085, dated August 21, 1992, has been accomplished, as of the effective date of this AD: Before the accumulation of 18,000 total flight cycles on an upper arm since new, or within 96 months on an upper arm since new, whichever is first.

No Report Required

(i) Messier-Dowty Special Inspection Service Bulletin 631–32–178, Revision 1, dated September 30, 2004, recommends sending an inspection report to Messier-Dowty, but this AD does not contain that requirement.

Parts Installation

(j) As of the effective date of this AD, no person may install, on any airplane, an aluminum upper arm of the MLG secondary side brace assembly, unless the applicable requirements specified in paragraphs (f) and (g) of this AD have been accomplished.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(l) French airworthiness directive F–2004–164, dated October 13, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on July 14, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14393 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19863; Directorate Identifier 2003–NM–29–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–100, A320–200, and A321–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain Airbus Model A319–100, A320–200, and A321–100 and –200 series airplanes. The original NPRM would have superseded an existing AD that currently requires modification of the telescopic girt bar of the escape slide/raft assembly, and follow-on actions. The original NPRM proposed to mandate a new modification of the telescopic girt bar, which would terminate the repetitive functional tests required by the existing AD. The original NPRM also proposed to expand the applicability of the existing AD. The original NPRM was prompted by development of a new, improved modification. This new action would revise the original NPRM by proposing to mandate the installation of placards on the modified girt bars, and reduce the compliance time. We are proposing this supplemental NPRM to prevent failure of the escape slide/raft to deploy correctly, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers.

DATES: We must receive comments on this supplemental NPRM by August 15, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19863; the directorate identifier for this docket is 2003–NM–29–AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ‘‘Docket No. FAA–2004–19863; Directorate Identifier 2003–NM–29–AD’’ at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for an AD (the ‘‘original NPRM’’) for certain Airbus Model A319, A320, and A321 series airplanes. The original NPRM proposed to supersede AD 2001–16–14, amendment 39–12383 (66 FR 42939, August 16, 2001), which applies to certain Airbus Model A319, A320, and A321 series airplanes. The original NPRM was published in the **Federal Register** on December 16, 2004 (69 FR 75273). The original NPRM proposed to retain the requirements of the existing AD and mandate a new modification of the telescopic girt bar, which would terminate the repetitive functional tests of the existing AD. The original NPRM also proposed to expand the applicability of the existing AD. The original NPRM was prompted by development of a new, improved modification.

Comments

We have considered the following comments on the original NPRM.

Request To Add Revised Service Information

One commenter concurs with the content of the original NPRM and asks that Airbus Service Bulletins A320–52–1112, Revision 03, dated June 27, 2003; and Revision 04, dated November 12, 2003; be added as additional sources of service information for accomplishing the new modification. Revision 02 of the service bulletin was referenced in the original NPRM as the appropriate source of service information for accomplishing the modification of the telescopic girt bar of the escape slide/raft assembly. The commenter notes that Revisions 03 and 04 of the service bulletin did not change the content of Revision 02 of the service bulletin, and should be allowed as an alternative method of compliance.

Another commenter asks that Revision 05 of the referenced service bulletin, dated June 25, 2004, be added to the original NPRM as the source of service information for accomplishing the existing and new requirements. The commenter notes that Revision 05 adds procedures for the installation of a sticker (placard) on each of the four girt bars. That installation was omitted in the procedures specified in previous issues of the service bulletin. The commenter adds that the purpose of the stickers is to provide positive visual indication of girt bar engagement in the armed mode, and the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, is in the process of issuing a new airworthiness directive to require installation of those stickers.

We agree with the commenters. Airbus has issued, and we have reviewed, Service Bulletins A320–52–1112, Revision 03, dated June 27, 2003; Revision 04, dated November 12, 2003; and Revision 05, dated June 25, 2004. No more work is necessary if Revisions 03 and 04 are used, as they are essentially the same as Revision 02 of the service bulletin. Revision 05 adds procedures for installing placards on the modified telescopic girt bars of the escape slide/raft assembly.

The DGAC mandated compliance with Revision 05 of the service bulletin and issued French airworthiness directive F–2005–057, dated April 13, 2005, to ensure the continued airworthiness of these airplanes in France.

We agree that the placards are needed to provide positive visual indication of girt bar engagement in the armed mode. Therefore, we have changed paragraph (g) of this supplemental NPRM to add paragraphs (g)(1) and (g)(2), which specify modifying the telescopic girt bars and installing placards on the modified girt bars using Revision 05 of the service bulletin to accomplish those actions. In addition, we have added Revisions 03 and 04 to paragraph (i) of this supplemental NPRM to give credit for previous accomplishment of the modification of the telescopic girt bar of the escape slide/raft assembly.

Request for Excluding Installation of Placards

One commenter asks that the installation of placards recommended in Revision 05 of the referenced service bulletin be excluded from the requirements of the original NPRM. The commenter states that Revision 05 added procedures for installing a ''dot'' placard to the modified girt bar, for identification. The commenter notes that this placard seems to be self-sticking with adhesive, and does not change the part number of the modified girt bar. The commenter adds that the placard will eventually come off and cause compliance issues in the future, even though there are currently no such reports from Airbus. The commenter also asks that references up to and including Revision 05 of the service bulletin be added to the original NPRM as acceptable sources for the instructions for the modification, with the exception of the placard installation.

We do not agree with the commenter's request. We have determined that installation of the placards, as identified in Revision 05 of the service bulletin and required by French airworthiness directive F–2005–057, is necessary and the placards should be maintained as part of normal airplane maintenance. As stated previously, the purpose of the stickers is to provide positive visual indication of girt bar engagement in the armed mode. This visual indication will ensure continued safe flight of the airplane. No change is made to the supplemental NPRM in this regard.

Request To Reduce Compliance Time

The same commenter asks (as a follow-on to its previous request) that we reduce the compliance time for the modification specified in paragraph (g) of the original NPRM to ''not later than December 31, 2006,'' as originally required by French airworthiness directive 2002–637(B), dated December 24, 2002. The commenter disagrees with the compliance time of 48 months that was specified in the original NPRM. The commenter states that, although the DGAC imposed a similar compliance schedule when the French airworthiness directive was issued 2 years ago (requiring compliance by December 31, 2006), the modification was developed several years ago and is immediately available for implementation on U.S. carriers. The commenter sees no reason to prolong the implementation simply because the original NPRM was not issued at the same time as the French airworthiness directive.

We agree with the intent of the commenter's remarks. However, we express compliance times based on calendar dates (*e.g.*, ''not later than December 31, 2006'') only when engineering analysis establishes a direct relationship between the date and the compliance time. In this case, no direct relationship exists. The compliance time, December 31, 2006, for the subject modification specified in the French airworthiness directive corresponds to 20 months after the effective date of the original issue of French airworthiness directive F–2005–057, dated April 13, 2005. Thus, the compliance time of 20 months after the effective date of this AD for the modification is consistent with the compliance time specified in the French airworthiness directive. We have changed the compliance time specified in paragraph (g) of this supplemental NPRM accordingly.

Explanation of Change to Applicability

We have revised the applicability of the original NPRM to identify model designations as published in the most recent type certificate data sheet for the affected models.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

This proposed AD would affect about 517 airplanes of U.S. registry.

The modification that is required by AD 2001–16–14 and retained in this proposed AD takes about 7 work hours per airplane, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the estimated cost of the currently required modification for U.S. operators is $235,235, or $455 per airplane.

The functional test that is required by AD 2001–16–14 and retained in this proposed AD takes about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required functional test for U.S. operators is $33,605, or $65 per airplane, per test cycle.

For airplanes that have not been modified in accordance with AD 2001–16–14: The new proposed modification (including the new placard installation) would take about 17 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $5,130 per airplane. Based on these figures, the estimated cost of the new modification specified in this proposed AD is $6,235 per airplane.

For airplanes that have been modified in accordance with AD 2001–16–14: The new proposed modification (including the new placard installation) would take about 21 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $5,130 per airplane. Based on these figures, the estimated cost of the new modification specified in this proposed AD is $6,495 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–12383 (66 FR 42939, August 16, 2001), and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2004–19863; Directorate Identifier 2003–NM–29–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 15, 2005.

Affected ADs

(b) This AD supersedes AD 2001–16–14, amendment 39–12383 (66 FR 42939, August 16, 2001).

Applicability

(c) This AD applies to Airbus Model A319–100, A320–200, and A321–100 and –200 series airplanes; certificated in any category; equipped with telescopic girt bars of the escape slide/raft assembly installed per Airbus Modification 20234, or Airbus Service Bulletin A320–25–1055 or A320–25–1218 in service; except those airplanes with Airbus Modification 31708.

Unsafe Condition

(d) This AD was prompted by development of a new, improved modification of the telescopic girt bar of the escape slide/raft assembly. We are issuing this AD to prevent failure of the escape slide/raft to deploy correctly, which could result in the slide being unusable during an emergency evacuation and consequent injury to passengers or airplane crewmembers.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2001–16–14

Modification/Follow-On Actions

(f) For airplanes listed in Airbus Industrie All Operators Telex A320–52A1111, Revision 01, dated July 23, 2001: Within 1,500 flight hours after August 31, 2001 (the effective date of AD 2001–16–14); except as provided by paragraph (h) of this AD, modify the telescopic girt bar of the escape slide/raft assembly installed on all passenger and crew doors and do a functional test to ensure the girt bar does not retract, per Airbus Industrie AOT A320–52A1111, Revision 01, dated July 23, 2001.

(1) If the girt bar retracts, before further flight, replace any discrepant parts and do another functional test to ensure the girt bar does not retract, per the AOT. Repeat the functional test thereafter at intervals not to exceed 18 months until paragraph (g) of this AD is accomplished.

(2) If the girt bar does not retract, repeat the functional test thereafter at intervals not to exceed 18 months.

Note 1: Modification and follow-on actions accomplished prior to the effective date of this AD per Airbus Industrie AOT A320–52A1111, dated July 5, 2001, are considered acceptable for compliance with the applicable actions specified in this amendment.

New Requirements of This AD

Modification

(g) Within 20 months after the effective date of this AD: Accomplish the actions specified in paragraphs (g)(1) and (g)(2) of this AD by doing all the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–52–1112, Revision 05, dated June 25, 2004. Accomplishing these actions terminates the repetitive functional tests required by paragraph (f) of this AD.

(1) Modify the telescopic girt bar of the escape slide/raft assembly.

(2) Install a placard on each modified girt bar.

(h) For airplanes on which the modification of the telescopic girt bar required by paragraph (g)(1) of this AD is accomplished within the compliance time specified in paragraph (f) of this AD, accomplishing the modification required by paragraph (f) is not required.

Modifications Accomplished According to Previous Issues of Service Bulletin

(i) Modification of the telescopic girt bar accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A320–52–1112, dated January 16, 2002; Revision 01, dated April 3, 2002; Revision 02, dated September 6, 2002; Revision 03, dated June 27, 2003; or Revision 04, dated November 12, 2003; is considered acceptable for compliance with the modification of the telescopic girt bar required by paragraph (g)(1) of this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install on any airplane a telescopic girt bar of the escape slide/raft assembly unless it has been modified as required by paragraph (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, International Branch, Transport Airplane Directorate, ANM–116, FAA, has the authority to approve alternative methods of compliance (AMOCs) for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously in accordance with AD 2001–16–14, amendment 39–12383, are approved as AMOCs with paragraph (f) of this AD.

Related Information

(l) French airworthiness directives 2002–637(B) R1, dated April 16, 2003, and F–2005–057, dated April 13, 2005, also address the subject of this AD.

Issued in Renton, Washington, on July 14, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14394 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21880; Directorate Identifier 2004–NM–216–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 and –300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 767–300 and –300F series airplanes. This proposed AD would require a one-time operational test of the pilots' seat locks and the seat tracks to ensure that the seats lock in position and the seat tracks are aligned correctly; and re-alignment of the seat tracks, if necessary. This proposed AD is prompted by reports indicating that a pilot's seat slid from the forward to the aft-most position during acceleration and take-off. We are proposing this AD to prevent uncommanded movement of the pilots' seats during acceleration and take-off of the airplane, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by September 6, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21880; the directorate identifier for this docket is 2004–NM–216–AD.

FOR FURTHER INFORMATION CONTACT: Sue Rosanske, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6448; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21880; Directorate Identifier 2004–NM–216–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

We have received reports indicating that the pilot's seat slid from the forward to the aft-most position during acceleration and take-off on a Model 737 series airplane. Investigation revealed that the seat track was aligned incorrectly. Misalignment of the seat tracks can occur when seat tracks have been reinstalled or replaced without fully testing the seat lock mechanism. Misalignment of the seat tracks, if not corrected, could result in uncommanded movement of the pilots' seats during acceleration and take-off of the airplane, and consequent reduced controllability of the airplane.

The pilot seat locks and tracks on certain Model 737 series airplanes are identical to those on the affected Model 767–300 and –300F series airplanes. Therefore, Model 767–300 and –300F series airplanes may be subject to the same unsafe condition.

Other Related Rulemaking

On January 27, 1998, we issued AD 98–03–10, amendment 39–10302 (63 FR 5725, February 4, 1998), applicable to certain Boeing Model 737, 747, 757, and 767 series airplanes. AD 98–03–10 requires a one-time operational test of the pilots' seat locks and the seat tracks to ensure that the seats lock in position and the seat tracks are aligned correctly; and re-alignment of the seat tracks, if necessary. We issued AD 98–03–10 to prevent uncommanded movement of the pilots' seats during acceleration and take-off of the airplane, and consequent reduced controllability of the airplane.

Since we issued AD 98–03–10, Boeing has issued Special Attention Service Bulletin 767–25–0244, Revision 2, dated September 2, 2004. Revision 2 adds five Model 767–300 and –300F series airplanes (variable numbers VK145, VL941, VN968, VW714, and VW715) to the effectivity of that service bulletin. We have determined that the unsafe condition of AD 98–03–10 may exist on these additional airplanes. Therefore, these airplanes are also subject to the one-time operational test of the pilots' seat locks and the seat tracks, and re-alignment of the seat tracks if necessary.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 767–25–0244, Revision 2, dated September 2, 2004. The service bulletin describes procedures for a one-time operational test of the pilots' seat locks and the seat tracks to ensure that the seats lock in position and the seat tracks are aligned correctly, and re-alignment of the seat tracks if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are 5 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 2 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $130, or $65 per airplane.

Re-alignment of the seat tracks, if necessary, would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the re-alignment is $130 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–21880; Directorate Identifier 2004–NM–216–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 767–300 and –300F series airplanes, variable numbers VK145, VL941, VN968, VW714, and VW715, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports indicating that the pilot's seat slid from the forward to the aft-most position during acceleration and take-off. We are issuing this AD to prevent uncommanded movement of the pilots' seats during acceleration and take-off of the airplane, and consequent reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection and Re-Alignment if Necessary

(f) Within 90 days after the effective date of this AD, do a one-time operational test of the pilots' seats and seat locks to determine if the lock pin of the seat track fully engages in all lock positions of the seat track, in accordance with Boeing Special Attention Service Bulletin 767–25–0244, Revision 2, dated September 2, 2004. If the seat lock pin fully engages in all lock positions of the seat track, no further action is required by this AD. If the seat lock pin does not fully engage in all positions of the seat track, before further flight, re-align the seat tracks, in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on July 13, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–14395 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 710 Through 729

[Docket No. 990611158–5180–05]

RIN 0694–AB06

Review Under Section 610 of the Regulatory Flexibility Act: Economic Impact of the Chemical Weapons Convention Regulations (CWCR) on Small Business Entities

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments.

SUMMARY: This document requests comments on the economic impact of the Chemical Weapons Convention Regulations (CWCR) on small business entities, pursuant to the requirements of Section 610 of the Regulatory Flexibility Act (RFA). The comments sought in this document should be directed to the impact of the CWCR on small business entities, only. The public does not need to re-submit previous comments made during the comment period that closed on February 7, 2005, for the proposed CWCR published on December 7, 2004.

DATES: Comments must be submitted by August 22, 2005.

ADDRESSES: You may submit comments, identified by RIN 0694–AB06, by any of the following methods:

- E-mail: *public.comments@bis.doc.gov.* Include ''RIN 0694–AB06'' in the subject line of the message.
- Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- Mail or Hand Delivery/Courier: Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AB06.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482–2440. For program information on declarations, reports, advance notifications, chemical determinations, recordkeeping, inspections and facility agreements, contact the Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, telephone: (703) 605–4400; for legal questions, contact Rochelle Woodard, Office of the Chief Counsel for Industry and Security, telephone: (202) 482–5301.

SUPPLEMENTARY INFORMATION: Under section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Bureau of Industry and Security (BIS) is required to periodically review all rules issued by the agency that have or will have a significant economic impact upon a substantial number of small entities. The purpose of the review is to determine whether these rules should be continued without change or whether they should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities.

As part of this review, BIS is also required to publish each year in the **Federal Register** a list of the rules that have a significant economic impact on a substantial number of small entities and that, therefore, must be reviewed pursuant to section 610 of the RFA during the succeeding twelve months. The list should include a brief description of each rule, identify the need for and legal basis of each rule, and invite public comment concerning the economic impact of each rule on small entities.

Pursuant to the Department of Commerce's plan for compliance with section 610 of the RFA, BIS undertook a review in 2005 of all rules promulgated during the period between April 1996 and October 2000 that had a significant economic impact on a substantial number of small entities. This review produced only one rule that was subject to a section 610 review: the Chemical Weapons Convention Regulations (CWCR), published in interim form on December 30, 1999 (15 CFR Parts 710–729).

Background on the Chemical Weapons Convention Regulations (CWCR)

The CWCR implement the provisions of the Chemical Weapons Convention Implementation Act of 1998 (CWCIA) (22 U.S.C. 6701 *et seq.*), which was enacted on October 21, 1998, to implement the Chemical Weapons Convention (CWC). The CWC, which entered into force on April 29, 1997, is an arms control treaty that bans the development, production, stockpiling or use of chemical weapons, and prohibits States Parties to the CWC from assisting or encouraging anyone to engage in a prohibited activity. The CWC provides for declaration and inspection of all States Parties' chemical weapons and chemical weapon production facilities, and oversees the destruction of such weapons and facilities. It also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process or consume certain ''scheduled'' chemicals or unscheduled discrete organic chemicals, many of which have significant commercial applications.

The CWCIA authorizes the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections conducted by inspectors sent by the Organization for the Prohibition of Chemical Weapons (OPCW). Executive Order (E.O.) 13128 delegates authority to the Department of Commerce to promulgate regulations, obtain and execute warrants, provide assistance to certain facilities, and carry out appropriate functions to implement the CWC, consistent with the Act.

The December 30, 1999, CWCR interim rule established the compliance requirements of the CWC, as mandated by the provisions of the CWCIA. The interim CWCR set forth the declaration, reporting and inspection requirements for U.S. industry and U.S. persons, as well as the responsibilities of the U.S. Government and BIS in implementing and enforcing the CWC domestically. On December 7, 2004, BIS published a proposed rule that would revise the CWCR to reflect changes to declaration and reporting requirements, clarify certain inspection provisions in the CWCR, and revise other sections of the CWCR that were affected by decisions made by the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization responsible for the implementation and enforcement of the CWC.

Conduct of Review and Request for Comments

In conducting its review, the Department will consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In order to consider these factors and to minimize any significant economic impact of the rule on a substantial number of small entities, the Department solicits comments on the economic impact of the CWCR on small entities.

As mentioned above, BIS published proposed revisions to the CWCR on December 7, 2004 (69 FR 70753), and requested comments on the proposed rule. The comment period for the proposed rule closed on February 7, 2005. BIS is currently reviewing those comments and incorporating any responses into the final CWCR. The comments that are submitted in response to this notice will be considered by BIS, in addition to those previously provided on the December 7, 2004, proposed rule, and BIS will address these comments in any forthcoming final rule. Therefore, comments that were submitted to BIS in response to the December 7, 2004, CWCR proposed rule need not be re-submitted in response to this request for comments. In this notice, BIS is seeking comments on the Chemical Weapons Convention regulations only with regard to the factors to be considered under section 610 of the RFA.

Dated: July 15, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–14441 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

Proposed Changes to Arbitration Policies, Functions, and Procedures

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects § 1404.5(b) and to add revisions to § 1404.5(d)(7) in a proposed rule published in the **Federal Register** of July 7, 2005 (70 FR 39209), regarding Arbitration Policies, Functions and Procedures. The corrections clarify the Proof of Qualification needed to be on the Roster in § 1404.5(b) and adds the

non-payment of the annual listing fee in § 1404.5(d)(7).

FOR FURTHER INFORMATION CONTACT: Maria A. Fried, General Counsel and Federal Register Liaison, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606–5444; Fax (202) 606–5345.

Correction

In proposed rule FR Doc. 05–11362, beginning on page 39209 in the issue on July 7, 2005, make the following corrections to § 1404.5(b) and (d)(7).

On page 39211, in the first column, correctly revise § 1404.5(b) to read as follows:

(b) *Proof of Qualification.* The qualifications listed in (a) of this section are preferably demonstrated by the submission of five recent arbitration awards prepared by the applicant while serving as an impartial arbitrator of record chosen by the parties to labor relations disputes arising under collective bargaining agreements, or the successful completion of the FMCS labor arbitrator training course within the five years immediately preceding the date of application plus two awards as described above, and the submission of information demonstrating extensive and recent experience in collective bargaining, including at least the position or title held, duties or responsibilities, the name and location of the company or organization, and the dates of employment.

On page 39211, in the center column, correctly revise § 1404.5(d)(7) to read as follows:

(d) * * *

(7) Has been in an inactive status pursuant to § 1404.6 for longer than two years and has not paid the annual listing fee.

Dated: July 15, 2005.

Maria A. Fried,

General Counsel and Federal Register Contact.

[FR Doc. 05–14347 Filed 7–20–05; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 504

RIN 0702–AA49

Obtaining Information From Financial Institutions

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Army proposes to revise its regulation concerning obtaining information from financial institutions. The regulation prescribes policies for the Department of the Army to obtain information on a customer's financial records from financial institutions.

DATES: Comments submitted to the address below on or before September 19, 2005, will be considered.

ADDRESSES: You may submit comments, identified by 32 CFR Part 504 and RIN 0702–AA49 in the subject line, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• E-mail: *james.crumley@hqda-aoc.army.pentagon.mil.* Include 32 CFR Part 504 and RIN 0702–AA49 in the subject line of the message.

• Mail: Headquarters, Department of the Army, Office of the Provost Marshal General, ATTN: DAPM–MPD–LE, 2800 Army Pentagon, Washington, DC 20310–2800.

FOR FURTHER INFORMATION CONTACT: James Crumley (703) 692–6721.

SUPPLEMENTARY INFORMATION:

A. Background

This rule has previously been published. The Administrative Procedure Act, as amended by the Freedom of Information Act requires that certain policies and procedures and other information concerning the Department of the Army be published in the **Federal Register**. The policies and procedures covered by this regulation fall into that category.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

The Department of the Army has determined that the National Environmental Policy Act does not apply because the proposed rule does not have an adverse impact on the environment.

E. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the proposed rule does not involve collection of information from the public.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is not a significant regulatory action. As such, the proposed rule is not subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 this proposed rule does not apply.

I. Executive Order 13132 (Federalism)

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 this proposed rule does not apply because it will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Jeffery B. Porter,

Chief, Law Enforcement Policy and Oversight Section.

List of Subjects in 32 CFR Part 504

Banks, Banking, Business, Investigations, Law enforcement, Military law, Privacy.

For reasons stated in the preamble the Department of the Army proposes to revise part 504 to subchapter A of title 32 to read as follows:

PART 504—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS

Sec.

Authority: 12 U.S.C. 3401 *et seq.*, Pub. L. 95–630, unless otherwise noted.

§ 504.1 General.

(a) *Purpose.* This part provides DA policies, procedures, and restrictions governing access to and disclosure of financial records maintained by financial institutions during the conduct of Army investigations or inquiries.

(b) *Applicability and scope.* (1) This part applies to the Active Army, the Army National Guard of the United States (ARNGUS)/Army National Guard (ARNG), and the Unites States Army Reserve unless otherwise stated.

(2) The provisions of 12 U.S.C. 3401 *et seq.* do not govern obtaining access to financial records maintained by financial institutions located outside of the territories of the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, or the Virgin Islands. The procedures outlined in § 504.2(d)(4) will be followed in seeking access to financial information from these facilities.

(3) This part also applies to financial records maintained by financial institutions as defined in § 504.1(c)(1).

(c) *Explanation of terms.* (1) For purposes of this part, the following terms apply:

(i) *Financial institution.* Any office of a—

(A) Bank.

(B) Savings bank.

(C) Card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)).

(D) Industrial loan company.

(E) Trust company.

(F) Savings association.

(G) Building and loan association.

(H) Homestead association (including cooperative banks).

(I) Credit union.

(J) Consumer finance institution.

(ii) This includes only those offices located in any State or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(2) *Financial record.* An original record, its copy, or information known to have been derived from the original record held by a financial institution, pertaining to a customer's relationship with the financial institution.

(3) *Person.* An individual or partnership of five or fewer individuals. (Per DODD 5400.12.)

(4) *Customer.* Any person or authorized representative of that person—

(i) Who used or is using any service of a financial institution.

(ii) For which a financial institution is acting or has acted as a fiduciary for an account maintained in the name of that person.

(5) *Law enforcement inquiry.* A lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, a criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(6) *Army law enforcement office.* Any army element, agency, or unit authorized to conduct investigations under the Uniform Code of Military Justice or Army regulations. This broad definition of Army law enforcement office includes military police, criminal investigation, inspector general, and military intelligence activities conducting investigations of suspected violations of law or regulation.

(7) *Personnel security investigation.* An investigation required to determine a person's eligibility for access to classified information, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigation includes investigations of subversive affiliations, suitability information, or hostage situations conducted to make personnel security determinations. It also includes investigations of allegations that—

(i) Arise after adjudicative action, and

(ii) Require resolution to determine a person's current eligibility for access to classified information or assignment or retention in a sensitive position. With DA, the Defense Investigative Service conducts personnel security investigations.

(d) *Policy*—(1) *Customer consent.* It is DA policy to seek customer consent to obtain a customer's financial records from a financial institution unless doing so would compromise or harmfully delay a legitimate law enforcement inquiry. If the person declines to consent to disclosure, the alternative means of obtaining the records authorized by this part will be used. (*See* § 504.2 (c) through (g).)

(2) *Access requests.* Except as provided in paragraph (d)(3) of this section and §§ 504.1(f)(1), 504.2(g) and 504.2(j), Army investigative elements may not have access to or obtain copies of the information in the financial records of any customer from a financial institution unless the financial records are reasonably described and the—

(i) Customer has authorized such disclosure (§ 504.2(b));

(ii) Financial records are disclosed in response to a search warrant which meets the requirements of § 504.2(d);

(iii) Financial records are disclosed in response to a judicial subpoena which meets the requirements of § 504.2(e); or

(iv) Financial records are disclosed in response to a formal written request which meets the requirements of § 504.2(f).

(3) *Voluntary information.* Nothing in this part will preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying an Army investigative element that such institution, or officer, employee or agent has information which may be relevant to a possible violation of any statute or regulation.

(e) *Authority.* (1) Law enforcement offices are authorized to obtain records of financial institutions per this part, except as provided in § 504.2(e).

(2) The head of a law enforcement office of field grade rank or higher (or an equivalent grade civilian official) is authorized to initiate requests for such records.

(f) *Exceptions and waivers.* (1) A law enforcement office may issue a formal written request for basic identifying account information to a financial institution as part of a legitimate law enforcement inquiry. The request may be issued for any or all of the following identifying data:

(i) Name.

(ii) Address.

(iii) Account number.

(iv) Type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

(2) A request for disclosure of the above specified basic identifying data on a customer's account may be issued without complying with the customer notice, challenge, or transfer procedures described in § 504.2. However, if access to the financial records themselves is required, the procedures in § 504.2 must be followed. (A sample format for requesting basic identifying account data is in app. A.)

(3) This part will not apply when financial records are sought by the Army under the Federal Rules for Civil Procedure, Criminal Procedure, Rules for Courts-Martial, or other comparable rules of other courts in connection with litigation to which the Government and the customer are parties.

(4) No exceptions or waivers will be granted for those portions of this part required by law. Submit requests for exceptions or waivers of other aspects of this part to HQDA OPMG (DAPM–MPD–LE), Washington, DC 20310–2800.

§ 504.2 Procedures.

(a) *General.* A law enforcement official seeking access to a person's financial records will, when feasible, obtain the customer's consent. This section also sets forth other authorized procedures for obtaining financial records if it is not feasible to obtain the customer's consent. Authorized procedures for obtaining financial records follow. All communications with a U.S. Attorney or a U.S. District Court, as required by this part, will be coordinated with the supporting staff judge advocate before dispatch.

(b) *Customer consent.* (1) A law enforcement office may gain access to or a copy of a customer's financial records by obtaining the customer's consent and authorization in writing. (*See* app. B to this part for a sample format.) Any consent obtained under the provisions of this paragraph must—

(i) Be in writing, signed, and dated.

(ii) Identify the particular financial records being disclosed.

(iii) State that the customer may revoke the consent at any time before disclosure.

(iv) Specify the purpose of disclosure and to which agency the records may be disclosed.

(v) Authorize the disclosure for a period not over 3 months.

(vi) Contain a ''Statement of Customer Rights Under the Right to Financial Privacy Act of 1978'' (12 U.S.C. 3401 *et seq.*) (app. B).

(2) Any customer's consent not containing all of the elements listed in paragraph (a) of this section will not be valid.

(3) A copy of the customer's consent will be made a part of the law enforcement inquiry file.

(4) A certification of compliance with 12 U.S.C. 3401 *et seq.* (app. C), along with the customer's consent, will be provided to the financial institution as a prerequisite to obtaining access to the financial records.

(c) *Administrative summons or subpoena.* The Army has no authority to issue an administrative summons or subpoena for access to financial records.

(d) *Search warrant.* (1) A law enforcement office may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure in appropriate cases.

(2) No later than 90 days after the search warrant is served, unless a delay of notice is obtained under § 504.2(i), a copy of the search warrant and the following notice must be mailed to the customer's last known address:

Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (office/agency/unit) on (date) for the following purpose: (state purpose). You may have rights under the Right to Financial Privacy Act of 1978.

(3) Search authorization signed by installation commanders or military judges will not be used to gain access to financial records from financial institutions in any State or territory of the United States.

(4) Access to financial records maintained by military banking contractors in overseas areas or by other financial institutions located on DOD installations outside the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, or the Virgin Islands is preferably obtained by customer consent.

(i) In cases where it would not be appropriate to obtain this consent or such consent is refused and the financial institution is not otherwise willing to provide access to its records, the law enforcement activity may seek access by use of a search authorization. This authorization must be prepared and issued per AR 27–10, Military Justice.

(ii) Information obtained under this paragraph should be properly identified as financial information. It should be transferred only where an official need-to-know exists. Failure to do so, however, does not render the information inadmissible in courts-martial or other proceedings.

(iii) Law enforcement activities seeking access to financial records maintained by all other financial institutions overseas will comply with local foreign statutes or procedures governing such access.

(e) *Judicial subpoena.* Judicial subpoenas—(1) Are those subpoenas issued in connection with a pending judicial proceeding.

(2) Include subpoenas issued under Rule for Courts-Martial 703(e)(2) of the Manual for Courts-Martial and Article 46 of the Uniform Code of Military Justice. The servicing staff judge advocate will be consulted on the availability and use of judicial subpoenas.

(f) *Formal written request.* (1) A law enforcement office may formally request financial records when the records are relevant to a legitimate law enforcement inquiry. This request may be issued only if—(i) The customer has declined to consent to the disclosure of his or her records, or

(ii) Seeking consent from the customer would compromise or harmfully delay a legitimate law enforcement inquiry.

(2) A formal written request will be in a format set forth in appendix D of this part and will—

(i) State that the request is issued under the Right to Financial Privacy Act of 1978 and this part.

(ii) Described the specific records to be examined.

(iii) State that access is sought in connection with a legitimate law enforcement inquiry.

(iv) Describe the nature of the inquiry.

(v) Be signed by the head of the law enforcement office or a designee (persons specified in § 504.1(e)(2)).

(3) At the same time or before a formal written request is issued to a financial institution, a copy of the request will be personally served upon or mailed to the customer's last known address unless a delay of customer notice has been obtained under § 504.2(i). The notice to the customer will be—

(i) In a format similar to appendix E of this part.

(ii) Personally served at least 10 days or mailed at least 14 days before the date on which access is sought.

(4) The official who signs the customer notice is designated to receive any challenge from the customer.

(5) The customer will have 10 days to challenge a notice request when personal service is made, and 14 days when service is by mail.

(6) The head of the law enforcement office initiating the formal written request will set up procedures to ensure that no access to financial records is attempted before expiration of the above time periods—

(i) While awaiting receipt of a potential customer challenge, or

(ii) While awaiting the filing of an application for an injunction by the customer.

(7) Proper preparation of the formal written request and notice to the customer requires preparation of motion papers and a statement suitable for court filing by the customer. Accordingly, the law enforcement office intending to initiate a formal written request will coordinate preparation of the request, the notice, motion papers, and sworn statement with the supporting staff judge advocate. These documents are required by statute; their preparation cannot be waived.

(8) The supporting staff judge advocate is responsible for liaison with the proper United States Attorney and United States District Court. The

requesting official will coordinate with the supporting staff judge advocate to determine whether the customer has filed a motion to prevent disclosure of the financial records within the prescribed time limits.

(9) The head of the law enforcement office (§ 504.2(f)(2)(v)) will certify in writing (see app. C) to the financial institution that such office has complied with the requirements of 12 U.S.C. 3401 *et seq.*—

(i) When a customer fails to file a challenge to access financial records within the above time periods, or

(ii) When a challenge is adjudicated in favor of the law enforcement office. No access to any financial records will be made before such certification is given.

(g) *Emergency access.* Section 504.2(g)(2)(3) provides for emergency access in such cases of imminent danger. (No other procedures in this part apply to such emergency access.)

(1) In some cases, the requesting law enforcement office may determine that a delay in obtaining access would create an imminent danger of—

(i) Physical injury to a person,

(ii) Serious property damage, or

(iii) Flight to avoid prosecution.

(2) When emergency access is made to financial records, the requesting official (§ 504.1(e)(2)) will—

(i) Certify in writing (in a format similar to that in app. C) to the financial institution that the provisions of 12 U.S.C. 3401 *et seq.* have been complied with as a prerequisite to obtaining access.

(ii) File with the proper court a signed, sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

(3) After filing of the signed, sworn statement, the official who has obtained access to financial records under this paragraph will as soon as practicable—

(i) Personally serve or mail to the customer a copy of the request to the financial institution and the following notice, unless a delay of notice has been obtained under § 504.2(i):

> Records concerning your transactions held by the financial institution named in the attached request were obtained by (office/agency/unit) under the Right to Financial Privacy Act of 1978 on (date) for the following purpose: (state with reasonable detail the nature of the law enforcement inquiry). Emergency access to such records was obtained on the grounds that (state grounds).

(ii) Ensure that mailings under this section are by certified or registered mail to the last known address of the customer.

(h) *Release of information obtained from financial institutions*—(1) *Records notice.* Financial records, to include derived information, obtained under 12 U.S.C. 3401 *et seq.* will be marked as follows:

> This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, and may not be transferred to another Federal agency or department outside DOD without prior compliance with the transferring requirements of 12 U.S.C. 3412.

(2) *Records transfer.* (i) Financial records originally obtained under this part will not be transferred to another agency or department outside the DOD unless the transferring law enforcement office certifies their relevance in writing. Certification will state that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. To support this certification, the transferring office may require that the requesting agency submit adequate justification for its request. File a copy of this certification with a copy of the released records.

(ii) Unless a delay of customer notice has been obtained (§ 504.2(i)), the transferring law enforcement office will, within 14 days, personally serve or mail the following to the customer at his or her last known address—

(A) A copy of the certification made according to § 504.2(h)(2)(i) and

(B) The following notice, which will state the nature of the law enforcement inquiry with reasonable detail:

> Copies of, or information contained in, your financial records lawfully in possession of the Department of the Army have been furnished to (state the receiving agency or department) pursuant to the Right to Financial Privacy Act of 1978 for (state the purpose). If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974.

(iii) If a request for release of information is from a Federal agency authorized to conduct foreign intelligence or foreign counterintelligence activities (Executive Order 12333) and is for purposes of conducting such activities by these agencies, the information will be released without notifying the customer, unless permission to provide notification is given in writing by the requesting agency.

(iv) Financial information obtained before the effective date of the Financial Privacy Act of 1978 (March 10, 1979) may continue to be provided to other agencies according to existing procedures, to include applicable Privacy Act System Notices published in AR 340–21 series.

(3) *Precautionary measures.* Whenever financial data obtained under this part is incorporated into a report of investigation or other correspondence, precautions must be taken to ensure that—

(i) The report or correspondence is not distributed outside of DOD except in compliance with paragraph (h)(2)(ii)(B) of this section.

(ii) The report or other correspondence contains the following warning restriction on the first page or cover:

> Some of the information contained herein (cite specific paragraphs) is financial record information which was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.* This information may not be released to another Federal agency or department outside the DOD without compliance with the specific requirements of 12 U.S.C. 3412 and AR 190–6.

(i) *Delay of customer notice procedures*—(1) *Length of delay.* The customer notice required by formal written request (§ 504.2(f)(3)), emergency access (§ 504.2(g)(3)), and release of information (§ 504.2(h)(2)(iii)) may be delayed for successive periods of 90 days. The notice required for search warrant (§ 504.2(d)(2)) may be delayed for one period of 180 days and successive periods of 90 days.

(2) *Conditions for delay.* A delay of notice may only be made by an order of an appropriate court. This will be done when not granting a delay in serving the notice would result in—

(i) Endangering the life or physical safety of any person.

(ii) Flight from prosecution.

(iii) Destruction of or tampering with evidence.

(iv) Intimidation of potential witnesses.

(v) Otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same degree as the circumstances in § 504.2(i)(2)(i) through (iv).

(3) *Coordination.* When a delay of notice is appropriate, the law enforcement office involved will consult with the supporting staff judge advocate before attempting to obtain such a delay. Applications for delay of notice should contain reasonable detail.

(4) *After delay expiration.* Upon the expiration of a delay of notice under above and required by—

(i) Section 504.2(d)(2), the law enforcement office obtaining financial records will mail to the customer a copy of the search warrant and the following notice.

Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or office) on (date). Notification was delayed beyond the statutory 180-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning (state with reasonable detail). You may have rights under the Right to Financial Privacy Act of 1978.

(ii) Section 504.2(f)(3), the law enforcement office obtaining financial records will serve personally or mail to the customer a copy of the process or request and the following notice:

Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of the court so ordering) under the Right to Financial Privacy Act of 1978 that such notice might (state reason). The purpose of the investigation or official proceeding was (state purpose with reasonable detail).

(iii) Section 504.2(g)(3), the law enforcement office obtaining financial records will serve personally or mail to the customer a copy of the request and the notice required by § 504.2(g)(3).

(iv) Section 504.2(h)(2), the law enforcement office transferring financial records will serve personally or mail to the customer the notice required by § 504.2(f)(3). If the law enforcement office was responsible for obtaining the court order authorizing the delay, such office shall also serve personally or by mail to the customer the notice required in § 504.2(f)(3).

(j) *Foreign intelligence and foreign counterintelligence activities.* (1) Except as indicated below, nothing in this regulation applies to requests for financial information in connection with authorized foreign intelligence and foreign counterintelligence activities as defined in Executive Order 12333. Appropriate foreign intelligence and counterintelligence directives should be consulted in these instances.

(2) However, to comply with the Financial Privacy Act of 1978, the following guidance will be followed for such requests. When a request for financial records is made—

(i) A military intelligence group commander, the chief of an investigative control office, or the Commanding General (CG) (or Deputy CG), U.S. Army Intelligence and Security Command, will certify to the financial institution that the requesting activity has complied with the provisions of 12 U.S.C. 3403(b).

(ii) The requesting official will notify the financial institution from which records are sought that 12 U.S.C. 3414(a)(3) prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained.

(k) *Certification.* A certificate of compliance with the Right to Financial Privacy Act of 1978 (app. C) will be provided to the financial institution as a prerequisite to obtaining access to financial records under the following access procedures:

(1) Customer consent (§ 504.2(b)).
(2) Search warrant (§ 504.2(d)).
(3) Judicial subpoena (§ 504.2(e)).
(4) Formal written request (§ 504.2(f)).
(5) Emergency access (§ 504.2(g)).
(6) Foreign intelligence and foreign counterintelligence activities (§ 504.2(j)).

Appendix A to Part 504—Request for Basic Identifying Account Data—Sample Format

(Official Letterhead)

(Date) ________

Mr./Mrs. ________,

Chief Teller (as appropriate), First National Bank, Little Rock, AR 72203.

Dear Mr./Mrs.________: In connection with a legitimate law enforcement inquiry and pursuant to section 3414 of the Right to Financial Privacy Act of 1978, section 3401 *et seq.*, Title 12, United States Code, you are requested to provide the following account information: (name, address, account number, and type of account of any customer or ascertainable group of customers associated with a certain financial transaction or class of financial transactions as set forth in § 504.1(f)).

I hereby certify, pursuant to section 3403(b) of the Right to Financial Privacy Act of 1978, that the provisions of the Act have been complied with as to this request for account information.

(Official Signature Block) ________

Under section 3417(c) of the Act, good faith reliance upon this certification relieves your institution and its employees and agents of any possible liability to the subject in connection with the disclosure of the requested financial records.

Appendix B to Part 504—Customer Consent and Authorization for Access—Sample Format

Pursuant to section 3404(a) of the Right to Financial Privacy Act of 1978, I, (name of customer), having read the explanation of my rights on the reverse side, hereby authorize the (name and address of financial institution) to disclose these financial records: (list of particular financial records) to(Army law enforcement office) for the following purpose(s): (specify the purpose(s)).

I understand that this authorization may be revoked by me in writing at any time before my records, as described above, are disclosed, and that this authorization is valid for no more than 3 months from the date of my signature.

Date: ________

Signature: ________

(Typed name)

(Mailing address of customer)

Statement of Customer Rights Under the Right to Financial Privacy Act of 1978

Federal law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, credit card issuers, or other financial institutions may give financial information about you to a Federal agency, certain procedures must be followed.

Consent to Financial Records

You may be asked to consent to the financial institution making your financial records available to the Government. You may withhold your consent, and your consent is not required as a condition of doing business with any financial institution. If you give your consent, it can be revoked in writing at any time before your records are disclosed. Furthermore, any consent you give is effective for only 3 months and your financial institution must keep a record of the instances in which it discloses your financial information.

Without Your Consent

Without your consent, a Federal agency that wants to see your financial records may do so ordinarily only by means of a lawful subpoena, summons, formal written request, or search warrant for that purpose. Generally, the Federal agency must give you advance notice of its request for your records explaining why the information is being sought and telling you how to object in court. The Federal agency must also send you copies of court documents to be prepared by you with instructions for filling them out. While these procedures will be kept as simple as possible, you may want to consult an attorney before making a challenge to a Federal agency's request.

Exceptions

In some circumstances, a Federal agency may obtain financial information about you without advance notice or your consent. In most of these cases, the Federal agency will be required to go to court for permission to obtain your records without giving you notice beforehand. In these instances, the court will make the Government show that its investigation and request for your records are proper. When the reason for the delay of notice no longer exists, you will usually be notified that your records were obtained.

Transfer of Information

Generally, a Federal agency that obtains your financial records is prohibited from transferring them to another Federal agency unless it certifies in writing the transfer is proper and sends a notice to you that your records have been sent to another agency.

Penalties

If the Federal agency or financial institution violates the Right to Financial Privacy Act, you may sue for damages or seek compliance with the law. If you win, you may be repaid your attorney's fee and costs.

Additional Information

If you have any questions about your rights under this law, or about how to consent to release your financial records, please call the official whose name and telephone number appears below:

(Last Name, First Name, Middle Initial)

Title (Area Code) (Telephone Number)

(Component activity, address)

Appendix C to Part 504—Certificate of Compliance With the Right to Financial Privacy Act of 1978—Sample Format

(Official Letterhead)

Mr./Mrs. ________,

Manager, Army Federal Credit Union, Fort Ord, CA 93941.

Dear Mr./Mrs. ________: I certify, pursuant to section 3403(b) of the Right to Financial Privacy Act of 1978, section 3401 *et seq.*, Title 12, United States Code, that the applicable provisions of that statute have been complied with as to the (customer's consent, search warrant or judicial subpoena, formal written request, emergency access, as applicable) presented on (date), for the following financial records of (customer's name):

(Describe the specific records)

(Official Signature Block) ________

Pursuant to section 3417(c) of the Right to Financial Privacy Act of 1978, good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records.

Appendix D to Part 504—Formal Written Request for Access—Sample Format

(Official Letterhead)

(Date) ________

Mr./Mrs. ________,

President (as appropriate), City National Bank and Trust Company, Altoona, PA 16602.

Dear Mr./Mrs. ________: In connection with a legitimate law enforcement inquiry and pursuant to section 3402(5) and section 3408 of the Right to Financial Privacy Act of 1978, section 3401 *et seq.*, Title 12, United States Code, and Army Regulation 190–6, you are requested to provide the following account information pertaining to (identify customer);

(Describe the specific records to be examined)

The Army has no authority to issue an administrative summons or subpoena for access to these financial records which are required for (describe the nature or purpose of the inquiry).

A copy of this request was (personally served upon or mailed to) the subject on (date) who has (10 or 14) days in which to challenge this request by filing an application in an appropriate United States district court if the subject desires to do so.

Upon expiration of the above mentioned time period and in the absence of any filing or challenge by the subject, you will be furnished a certification certifying in writing that the applicable provisions of the Act have been complied with prior to obtaining the requested records. Upon your receipt of a Certificate of Compliance with the Right to Financial Privacy Act of 1978, you will be relieved of any possible liability to the subject in connection with the disclosure of the requested financial records.

(Official Signature Block) ________

Appendix E to Part 504—Customer Notice of Formal Written Request—Sample Format

(Official Letterhead)

(Date) ________

Mr./Ms________,

1500 N. Main Street, Washington, DC 20314.

Dear Mr./Ms. ________: Information or records concerning your transactions held by the financial institution named in the attached request are being sought by the (agency/department) in accordance with the Right to Financial Privacy Act of 1978, section 3401 *et seq.*, Title 12, United States Code, and Army Regulation 190–6, for the following purpose(s):

(List the purpose(s))

If you desire that such records or information not be made available, you must do the following:

a. Fill out the accompanying motion paper and sworn statement or write one of your own—

(1) Stating that you are the customer whose records are being requested by the Government.

(2) Giving the reasons you believe that the records are not relevant or any other legal basis for objecting to the release of the records.

b. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

(List applicable courts)

c. Mail or deliver a copy of your motion and statement to the requesting authority: (give title and address).

d. Be prepared to come to court and present your position in further detail.

You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of (10 days from the date of personal service) (14 days from the date of mailing) of this notice, the records or information requested therein may be made available.

These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer if such transfer is made.

3 Enclosures (see para)____

(Signature) ________

[FR Doc. 05–14212 Filed 7–20–05; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–079]

RIN 1625–AA09

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Manasquan River

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations that govern the operation of the Route 35 Bridge, at New Jersey Intracoastal Waterway (NJICW) mile 1.1, across Manasquan River, at Brielle, New Jersey. The bridge will be closed to navigation on three four-month closure periods beginning from 8 a.m. November 1, 2006 until 5 p.m. March 1, 2007; from 8 a.m. on November 1, 2007 until 5 p.m. March 1, 2008; and from 8 a.m. on November 1, 2008 until 5 p.m. March 1, 2009. The extensive structural, mechanical, and electrical repairs and improvements necessitate these closures.

DATES: Comments and related material must reach the Coast Guard on or before September 6, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–05–079, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The New Jersey Department of Transportation (NJDOT) owns and operates the Route 35 Bridge, at NJICW mile 1.1, across Manasquan River, at Brielle, New Jersey. The current operating regulations set out in 33 CFR 117.733(b) requires the drawbridge to open on signal except as follows: from May 15 through September 30, on Saturdays, Sundays and Federal holidays, from 8 a.m. to 10 p.m. the draw need only open 15 minutes before the hour and 15 minutes after the hour; on Mondays to Thursdays from 4 p.m. to 7 p.m., and on Fridays, except Federal holidays from 12 p.m. to 7 p.m. the draw need only open 15 minutes before the hour and 15 minutes after the hour; and year-round from 11 p.m. to 8 a.m., the draw need only open if at least four hours notice is given.

Parsons Brinkerhoff, a design consultant, on behalf of NJDOT requested a temporary change to the existing regulations for the Route 35 Bridge to facilitate necessary repairs. The repairs consist of extensive structural rehabilitation, mechanical, electrical repairs and improvements to necessitate this closure. To facilitate repairs, the bascule span must be closed to vessel traffic on three four-month closure periods beginning 8 a.m. on November 1, 2006 until 5 p.m. March 1, 2007; from 8 a.m. on November 1, 2007 until 5 p.m. March 1, 2008; and from 8 a.m. on November 1, 2008 until 5 p.m. March 1, 2009.

The Coast Guard has reviewed the bridge data provided by NJDOT. The data, from years 2003 to 2005, shows a substantial decrease in the number of bridge openings and vessel traffic transiting the area between November and March. Based on the data provided, the proposed closure dates will have minimal impact on vessel traffic.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations governing the Route 35 Bridge over the Manasquan River, at NJICW mile 1.1, at Brielle, New Jersey, set out in 33 CFR 117.733(b). The Coast Guard proposes to temporarily suspend 33 CFR 117.733(b) and insert this new specific regulation at 33 CFR 117.733(l).

Paragraph (l) would allow the draw to be closed to vessel traffic during the rehabilitation project on three four-month closure periods beginning 8 a.m. on November 1, 2006 until 5 p.m. March 1, 2007; from 8 a.m. on November 1, 2007 until 5 p.m. March 1, 2008; and from 8 a.m. on November 1, 2008 until 5 p.m. March 1, 2009.

Regulatory Evaluation

This proposed rule is not a ‘‘significant regulatory action’’ under section 3(f) of Executive Order 12866, Regulatory Planning, and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ‘‘significant’’ under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the historical data, and on the fact that the proposed closure periods support minimal impact due to the reduced number of vessels requiring transit through the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ‘‘small entities’’ comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The off-season closure dates proposed for the bridge are designed to minimize the number of small entities affected.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8 a.m. on November 1, 2006 until 5 p.m. March 1, 2007; from 8 a.m. on November 1, 2007 until 5 p.m. March 1, 2008; and from 8 a.m. on November 1, 2008 until 5 p.m. March 1, 2009, in § 117.733, suspend paragraph (b) and add a new paragraph (l) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(l) From 8 a.m. on November 1, 2006 until 5 p.m. March 1, 2007; from 8 a.m. on November 1, 2007 until 5 p.m. March 1, 2008; and from 8 a.m. on November 1, 2008 until 5 p.m. March 1, 2009, the Route 35 Bridge, mile 1.1, at Brielle may remain closed to navigation.

Dated: July 11, 2005.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–14322 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. R02–OAR–2005–NJ–0002, FRL–7942–7]

Approval and Promulgation of Implementation Plans; New Jersey Architectural Coatings Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New Jersey State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to Subchapter 23 ''Prevention of Air Pollution From Architectural Coatings'' of 7:27 of the New Jersey Administrative Codes, which are needed to meet the shortfall in emissions reduction identified by EPA in New Jersey's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve a control strategy required by the Clean Air Act, which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: Comments must be received on or before August 22, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02–OAR–2005–NJ–0002 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

1. Agency Web site: *http://docket.eps.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick research,'' then key in the appropriate RME Docket

identification number. Follow the on–line instructions for submitting comments.

2. E-mail: *Werner.Raymond@epa.gov*.

3. Fax: (212) 637–3901.

4. Mail: ''RME ID Number R02–OAR–2005–NJ–0002'', Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

5. Hand Delivery or Courier. Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

A copy of the New Jersey submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3711.

SUPPLEMENTARY INFORMATION:

I. What Is Required by the Clean Air Act and How Does It Apply to New Jersey?

Section 182 of the Clean Air Act (Act) specifies the required State Implementation Plan (SIP) submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to EPA by the states. The Specific requirements vary depending upon the severity of the ozone problem. The New York-Northern New Jersey-Long Island and Philadelphia, Wilmington, Trenton nonattainment areas are nonattainment areas classified as severe. Under section 182, severe nonattainment areas were required to submit demonstrations of how they would attain the 1-hour ozone standard. On December 16, 1999 (64 FR 70380), EPA proposed approval of New Jersey's 1-hour ozone attainment demonstration SIP for the New Jersey portion of the New York-Northern New Jersey-Long Island nonattainment area and the New Jersey portion of the Philadelphia, Wilmington, Trenton attainment area. In that rulemaking, EPA identified an emission reduction shortfall associated with New Jersey's 1-hour ozone attainment demonstration SIPs, and required New Jersey to address the shortfalls. In a related matter, the Ozone Transport Commission (OTC) developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by states in developing their own regulations to achieve additional emission reduction to close emission shortfalls.

On February 4, 2002 (67 FR 5152), EPA approved New Jersey's 1-hour ozone attainment demonstration SIPs. This approval included an enforceable commitment submitted by New Jersey to adopt additional control measures to close the shortfalls identified by EPA for attainment of the 1-hour ozone standard.

II. What Was Included in New Jersey's Submittal?

On July 28, 2004, Bradley M. Campbell, Commissioner, New Jersey Department of Environmental Protection (NJDEP), submitted to EPA a revision to the SIP which included an adopted revision to subchapter 23, ''Prevention of Air Pollution From Architectural Coatings.'' This SIP revision will provide volatile organic compound (VOC) emission reductions to address, in part, the shortfall identified by EPA when New Jersey's 1-hour ozone attainment demonstrations were approved. New Jersey used the OTC model rules as guidelines to develop its rules.

III. Was Subchapter 23 Previously Approved by EPA?

On August 2, 1997 EPA approved subchapter 23 (62 FR 42414) as part of the New Jersey SIP. The July 20, 2004 submittal modifies subchapter 23 as previously approved.

IV. How Was Subchapter 23 Promulgated?

The NJDEP published the proposed rulemaking in the New Jersey Register on July 21, 2003 (35 N.J.R. 2983) and announced that a public hearing would be held, on September 9, 2003, in Trenton, New Jersey. NJDEP provided copies of the newspaper announcements and certification of publication. The public hearing was held on September 9, 2003 and thirteen individuals provided written and/or oral comments. The NJDEP prepared a summary of the comments and then evaluated the comments. NJDEP then prepared a response to the comments. The State adopted the revisions to Subchapter 23 on May 21, 2004 and published the adoption in the New Jersey Register on June 21, 2004 (36 N.J.R. 3078). Also published in the New Jersey Register was a summary of the comments received, the State response to the comments and any changes to the proposed rule resulting from the comments.

V. What Are the Requirements for ''Architectural Coatings''?

The revised Subchapter 23 now regulates 53 separate coating categories, some contain additional subcategories, which apply statewide. These categories are based on the original New Jersey subchapter 23, from the National AIM rule (see CFR part 59, subpart D), and the OTC Model rule. The revised subchapter 23 requires that, on or after January 1, 2005, no person shall sell, supply, offer for sale, or manufacture architectural coatings or apply architectural coatings for compensation which contain VOC's in excess of the VOC content limits. Subchapter 23 includes specific exemptions, as well as registration and product labeling requirements, recordkeeping and reporting requirements, and test methods and procedures.

Architectural coatings that are sold in New Jersey for shipment and use outside of the State of New Jersey are exempt from the VOC content limits, and administrative and testing requirements of subchapter 23. This exemption reflects the intent to regulate only the manufacture and distribution of architectural coatings that actually emit VOCs into New Jersey's air and not to interfere in the transportation of goods that are destined for use outside of the State. In addition, aerosol coating products and architectural coatings sold in containers holding one liter or less are also exempt.

Subchapter 23 contains provisions for accepting limited timeframe variances or exemptions that have been approved by another state or one of the California air quality management districts that have rules substantially equivalent to subchapter 23 and that have product categories and VOC content limits identical to subchapter 23. The State provisions specify the required documentation that must be submitted and the conditions under which New Jersey will recognize a limited timeframe variance or exemption that was granted by another state or California air management district with equivalent provisions. The variance or exemption can become effective in New Jersey for the period of time that the approved variance or exemption remains in effect, provided that all the architectural coatings within the variance or exemption are regulated by subchapter 23.

Paragraph 23.4(c) of subchapter 23 provides for alternate test methods for architectural coatings provided that the alternate method is demonstrated to provide results that are acceptable for purposes of determining compliance and that the alternate test method is first approved by both the NJDEP and the EPA.

VI. What Is EPA's Conclusion?

EPA has evaluated New Jersey's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions made to subchapter 23 ''Prevention of Air Pollution From Architectural Coatings'' of title 7, chapter 27 of the New Jersey Administrative Codes, meet the SIP revision requirements of the Act with the following exception. While the provisions related to exemptions and variances pursuant to subchapter 23, ''Architectural Coatings'' are acceptable, each specific application of those provisions will only be recognized as meeting Federal requirements after it is approved by EPA as a SIP revision. Therefore, EAP is proposing to approve the regulation as part of the New Jersey SIP with the exception that any specific application of provisions associated with variances or exemptions, must be submitted as SIP revisions.

Since submittal of this SIP revision, an issue arose concerning the quantity of emission reductions that would result from adopting an architectural coatings regulation, such as New Jersey's subchapter 23, that was more stringent than EPA's National AIM rule. Incorporating a regulation into a SIP that is more stringent, such as this one, strengthens the SIP and will result in further decreases in VOC emissions which will beneficially impact the ambient ozone concentrations. The exact amount of reductions attributed to implementation of the rule depends on what overall percent reduction is achieved and the quantity of coatings that meet these new standards.

EPA recognizes the need to resolve conclusively how to determine the amount of VOC emission reductions achieved from the implementation of AIM coatings rules in a given ozone nonattainment area. This remains an issue of concern to the states, the regulated sector, and other interested parties. Therefore, EPA will address the issue of exactly what quantity of emission reductions New Jersey can attribute to the revised subchapter 23 in a future **Federal Register** action. These emission reductions are required to meet the additional emission reductions EPA identified as needed to meet the 1-hour ozone standard. In addition, the entire State of New Jersey is classified as nonattainment for the 8-hour ozone standard. In order to attain this standard, New Jersey will need to achieve further reductions in VOC and nitrogen oxides.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law of EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 12, 2005.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. 05–14406 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. R02–OAR–2005–NY–0003, FRL–7942–6]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve a revision to the New York State Implementation Plan (SIP) concerning New York's permitting program. The

SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations, Part 201, ''Permits and Certificates.'' The intended effect of this proposal is to incorporate administrative changes to New York's permitting program into the SIP.

DATES: Comments must be received on or before August 22, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R02–OAR–2005–NY–0003 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

1. Agency Web site: *http://docket.epa.gov/rmepub/.* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
2. E-mail: *Werner.Raymond@epa.gov.*
3. Fax: (212) 637–3901.
4. Mail: ''RME ID Number R02–OAR–2005–NY–0003,'' Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
5. Hand Delivery or Courier. Deliver your comments to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

A copy of the New York's submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381 or *Wieber.Kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Was Included in New York's Submittal?

On June 16, 1996, David Sterman, then Deputy Commissioner, New York State Department of Environmental Conservation (NYSDEC), submitted to EPA a revision to the State Implementation Plan (SIP) which included revisions to Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 201, ''Permits and Certificates.'' The revisions to Part 201 were submitted by New York in support of its title V Operating Permit Program under the Clean Air Act (Act), and became State effective on July 7, 1996. New York requested at that time that Subparts 201–1, 201–2, 201–3, 201–4, 201–5, 201–7, 201–8 and Appendix B be incorporated into the federally approved SIP, replacing the existing federally approved version of Part 201. EPA has deferred taking action on those revisions to Part 201 due to unresolved concerns raised by the EPA and NYSDEC regarding specific Subparts. However, on May 27, 2005, Carl Johnson, Deputy Commissioner, NYSDEC, submitted a SIP revision requesting EPA's approval of only Subparts 201–7.1, ''General'' and 201–7.2, ''Emission Capping Using Synthetic Minor Permits,'' as were State effective on July 7, 1996, and the removal of Subpart 201.5(e) of the existing federally approved version of Part 201.

II. What Provisions to Part 201 Is EPA Acting On?

A. Subparts 201–7.1 and 201–7.2

The Subpart 201–7.1 and 201–7.2 provisions concern ''federally enforceable emission caps.'' These provisions allow owners or operators of stationary sources to accept permit conditions which restrict or ''cap'' emissions in order to avoid being subject to one or more applicable requirements regarding the source or emission unit. Typically, such a source has actual emissions substantially below its potential emissions and the cap would prevent increasing emissions. The owner or operator applying for an emission cap permit modification must include a proposed monitoring, recordkeeping, and reporting strategy that will be used to demonstrate that the emissions limitations under the proposed cap are verifiable, and enforceable, along with the proposed permit terms and conditions. Capping methods may include: The reduction in the hours of operation; reformulations relating to the cap, installation of control equipment; and/or other process changes.

On an annual basis, beginning one year after the granting of an emissions cap, the responsible official shall provide a certification to the NYSDEC that the facility has operated all emission units within the limits imposed by the emission cap. Facilities subject to this provision must keep records on-site for a minimum of five years. Emission caps established by New York pursuant to Subpart 201–7.2 are subject to public review and comment, as required by 201–7.2(b).

Although Subpart 201–7.1 makes reference to Subpart 201–7.3, EPA is not taking action on Subpart 201–7.3 at this time. However, Subpart 201.7.3 remains State enforceable.

EPA has determined that New York's revised Subparts 201–7.1 and 201–7.2 can be incorporated into the SIP. EPA recognizes federally enforceable limits or caps on potential to emit to be approvable. In addition, New York's revised Subparts 201–7.1 and 201–7.2 are designed to ensure that the limits on potential to emit are legally and practically enforceable. An August 27, 1996, EPA policy memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Extension of January 25, 1995 Potential to Emit Transition Policy'' states that, in light of the court's decision in *Clean Air Implementation Project v. EPA,* No. 96–1224 (D.C. Cir., June 28, 1996), the term ''federally enforceable'' in 40 CFR 70.2 should now be read to mean ''federally enforceable or legally and practicably enforceable by a state or local air pollution control agency.'' New York's revised Subparts 201–7.1 and 201–7.2 are currently State enforceable. The inclusion of these provisions into the SIP will ensure that New York's revised Subparts 201–7.1 and 201–7.2 are federally enforceable as well. EPA is therefore proposing approval.

B. Subpart 201.5(e)

As part of New York's May 27, 2005, submittal, New York requested that EPA remove existing Subpart 201.5(e) from the federally approved SIP. Subpart 201.5(e) concerns excess emissions during maintenance, malfunctions, and start-up.

On September 20, 1999, EPA issued a policy memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.'' On November 8, 2001 and December 5, 2001, EPA issued a memorandum of clarification in regard to the September 20, 1999, policy memorandum.

Because excess emissions might aggravate air quality so as to prevent attainment or interfere with maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation. Nevertheless, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator may not be appropriate. EPA's 1999 policy memorandum further specifies what is allowable and when and in what manner SIP's may provide for defenses of violations caused by periods of excess emissions due to malfunctions, startup, or shutdown.

New York's Subpart 201.5(e) was initially incorporated into the SIP prior to the issuance of this policy memorandum. EPA has determined that New York's Subpart 201.5(e) does not meet the required criteria for excusing excess emissions from maintenance, malfunctions or startup, as outlined in the 1999 EPA policy memorandum. Therefore, EPA agrees with New York's request to remove it from the federally enforceable SIP.

III. What Is EPA's Conclusion?

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions made to Part 201.7, ''Federally Enforceable Emission Caps,'' specifically the inclusion of Subparts 201–7.1, ''General'' and 201–7.2, ''Emission Capping Using Synthetic Minor Permits'' meet the SIP revision requirements of the Act. In addition, EPA has determined that existing Subpart 201.5(e) should no longer be included in the Federally approved SIP. Therefore, EPA is proposing to approve revised Subparts 201–7.1 and 201–7.2 into the Federally approved New York SIP and remove existing Subpart 201.5(e) from the federally approved New York SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule proposes to approve pre-existing requirements under state law, does not impose any additional enforceable duty beyond that required by state law, and does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 12, 2005.

George Pavlou,

Acting Regional Administrator, Region 2.

[FR Doc. 05–14407 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 70, No. 139

Thursday, July 21, 2005

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV05–502–N]

Notice of Request for Revision to an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection for Fruit and Vegetable Market News.

DATES: Comments received by September 19, 2005, will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Terry C. Long, Chief; Fruit and Vegetable Market News Branch, Fruit and Vegetable Programs, AMS–USDA, 1400 Independence Avenue, SW., Stop–0238, Washington, DC 20250–0238; telephone: (202) 720–2175, fax: (202) 720–0547. All comments will be available for public inspection at this address during the hours of 8 a.m. to 4 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Vegetable Market News.

OMB Number: 0581–0006.

Expiration Date of Approval: May 31, 2006.

Type of Request: Revision to an extension of a currently approved information collection.

Abstract: Collection and dissemination of information for fruit, vegetable and ornamental production and to facilitate trading by providing a price base used by producers, wholesalers, and retailers to market product.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.*), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The fruit and vegetable industry provides information on a voluntary basis, and is gathered through confidential telephone and face-to-face interviews by market reporters. Reporters request supplies, demand, and prices of over 400 fresh fruit, vegetable, nut ornamental, and other specialty crops.

The fruit and vegetable market news reports are used by academia, but are primarily used by the fruit, vegetable and ornamental trade, which includes packers, processors, brokers, retailers, and producers. The fruit and vegetable industry requested that the Department of Agriculture issue price and supply market reports for commodities of regional, national and international significance in order to assist them in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel.

Many government agencies use the reports to make their market outlook projections. Data from these reports is included in the information forwarded to the Secretary's office and staff, as needed, to keep them appraised of the current market conditions and movement of fruit, vegetable, and ornamental commodities in the United States. Economists at most major agricultural colleges and universities use the reports to make both short and long term market projections. The data is used extensively by consulting firms and private economists to aid them in determining available supplies and current pricing.

The information is collected, compiled, and disseminated by an impartial third party, in a manner which protects the confidentiality of the reporter. Further, since the Government is a purchaser of fruits and vegetables, a system to monitor the collection and reporting of data is needed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .033 hours per response.

Respondents: Fruit, vegetable, and ornamental industry, or other for-profit businesses, individuals or households, farms.

Estimated Number of Respondents: 18,174.

Estimated Number of Responses per Respondent: 200.

Estimated Total Annual Burden on Respondents: 119,787.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Terry C. Long, Chief, Fruit and Vegetable Market News Branch, Fruit and Vegetable Programs, AMS–USDA, 1400 Independence Avenue, SW., Stop-0238, Washington, DC 20250–0238.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 18, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–14387 Filed 7–20–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–303]

United States Standards for Grades of Field Grown Leaf Lettuce

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the comment period.

SUMMARY: Notice is hereby given that the comment period on possible development of United States Standards for Grades of Field Grown Leaf Lettuce is reopened and extended.

DATES: Comments must be received by September 19, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; fax (202) 720–8871; e-mail *FPB.DocketClerk@usda.gov.*

Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The proposed United States Standards for Grades of Field Grown Leaf Lettuce is available at either the above address, or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; e-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION:

A notice was published in the **Federal Register**, March 24, 2005, (70 FR 15065) requesting comments on the possible development of the United States Standards for Grades of Field Grown Leaf Lettuce. The proposed standards would provide industry with a common language and uniform basis for trading, thus promoting the orderly and efficient marketing of field grown leaf lettuce. Additionally, the Agricultural Marketing Service (AMS) is seeking any comments related to the proposed standards that may be necessary to better serve the industry. The comment period ended May 23, 2005.

A comment was received from a national industry association representing independent produce wholesale receivers, expressing the need for additional time to comment. The association requested the comment period be extended to allow the association an opportunity to meet further with their members to discuss the proposed standards.

After reviewing the request, AMS is reopening and extending the comment period in order to allow sufficient time for interested persons, including the association, to file comments.

Authority: 7 U.S.C. 1621–1627.

Dated: July 15, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–14386 Filed 7–20–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Buckhorn Mountain Project a Supplement to the Final Environmental Impact Statement or for Crown Jewel Mine, Okanogan and Wenatchee National Forests, Okanogan County, WA.

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of intent to prepare an environmental impact statement.

SUMMARY: On September 5, 2003, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Buckhorn Mountain Project, a Supplement to the final environmental impact statement for the Crown Jewel Mine was published in the **Federal Register** (68 FR 52736). The Forest Service has decided to cancel the preparation of this EIS. The NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Jan Flatten, Forest Environmental Coordinator, Okanogan and Wenatchee National Forest, Okanogan Valley Office, 1240 Second Avenue South, Okanogan, WA 98840. Telephone: (509) 826–3277.

Dated: July 12, 2005.

Norm Day,

Holden Project Manager, Okanogan and Wenatchee National Forests.

[FR Doc. 05–14375 Filed 7–20–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Import Certificates, End-User Certificates, and Delivery Verification Procedures.

Agency Form Number: None.

OMB Approval Number: 0694–0093.

Type of Request: Extension of a currently approved collection.

Burden: 645 hours.

Average Time Per Response: 15 to 30 minutes per response.

Number of Respondents: 2,221 respondents.

Needs and Uses: Import or End-User Certificates are an undertaking by the government of the country of ultimate destination (the issuing government) to exercise legal control over the disposition of the items covered by the importer (ultimate consignee or purchaser) and transmitted to the exporter (applicant). The control exercised by the government issuing the Import or End-User Certificate is in addition to the conditions and restrictions placed on the transaction by BIS. This collection of information also contains recordkeeping and reporting requirements that involve Import or End-user Certificates as supporting documentation accompanying an application for an export license (approved by OMB under control no. 0694–0088). Another reporting requirement allows exporters to request an exception to the imports certificate (or its equivalent) procedure. This reporting requirement also covers requests for exceptions to the delivery verification procedure.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: July 15, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14323 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

Bureau: International Trade Administration.

Title: Outside Assessment of DOC Compliance Program.

Agency Form Number: ITA–xxxx.

OMB Number: 0625–xxxx.

Type of Request: Regular Submission.

Burden: 110.5 hours.

Number of Respondents: 274.

Avg. Hours Per Response: 2 hours for focus group participants and 15 minutes for survey respondents.

Needs and Uses: In 2003, the Department of Commerce's (DOC's) International Trade Administration (ITA) conducted a bureau-wide Customer Satisfaction Survey covering all ITA program units, related to the citizen-centered objectives of the President's Management Agenda.

The results were used to set a baseline for performance metric reporting and tracking and to better understand the customer base it serves. ITA's Market Access and Compliance (MAC) program survey report identified gaps between a high level of customer awareness yet low customer use of fair trade and market access services. Findings also indicated that a substantial customer base is unaware of the specific services that the DOC Compliance Program offers.

In response to the survey findings, MAC is undertaking an outside customer service analysis to find out in more specific terms and greater detail, what MAC's Trade Compliance Center's (TCC's) customers' expectations are. The purpose of this outside assessment is to obtain customer and potential customer views regarding the DOC Compliance Program to determine:

- If the TCC offers the right set of services to assist U.S. exporters to overcome foreign trade barriers;
- If MAC is aware of exporter needs;
- If the right MAC programs are in place to meet identified needs; and
- If MAC services are properly promoted to maximize efficiency and effectiveness.

An enhanced customer satisfaction program or other service improvements might result from this data collection initiative.

Affected Public: U.S. Exporters and their Business Representatives, categorized as either active customers, prospective customers, or untapped customers.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6612, 14th and Constitution, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent via e-mail to David Rostker, OMB Desk Officer, *David_Rostker@omb.eop.gov* or fax (202) 395–7285, within 30 days of publication of this **Federal Register** notice.

Dated: July 15, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14324 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Logbook Family of Forms.

Form Number(s): NOAA Forms 88–30, 88–140.

OMB Approval Number: 0648–0212.

Type of Request: Regular submission.

Burden Hours: 5,937.

Number of Respondents: 4,596.

Average Hours Per Response: 6 minutes.

Needs and Uses: Fishing vessels permitted to participate in Federally-permitted fisheries in the Northeast are required to submit logbooks containing catch and effort information about their fishing trips. The participants in the herring, tilefish and red crab fisheries are also required to make reports on their catch through an Interactive Voice Response (IVR) system. In addition, permitted vessels that catch halibut are asked to voluntarily provide additional information on the estimated size of the fish and the time of day caught. The information submitted is needed for the management of the fisheries. This action seeks to renew Paperwork Reduction Act (PRA) clearance for this collection.

Affected Public: Business or other for-profit organizations; individuals or households; State, Local or Tribal Government.

Frequency: Monthly and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: July 15, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14326 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Performance Review Board Membership

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration's Senior Executive Service and Senior Professional Performance Management Systems:

Hermann Habermann; Shirin A. Ahmed; Teresa Angueira; William G. Bostic, Jr.; Stephanie Brown; Howard Hogan; Nancy M. Gordon; Arnold A. Jackson; Theodore A. Johnson; Ruth Ann Killion; Bob LaMacchia; Michael J. Longini; Thomas L. Mesenbourg; C. Harvey Monk; Andrew H. Moxam; Walter C. Odom, Jr.; Marvin D. Raines; Brain Monaghan; Rajendra P. Singh; Ricard W. Swartz; Alan R. Tupek; Preston J. Waite; Mark E. Wallace; Daniel H. Weinberg; Ewen M. Wilson; Tommy Wright; Robert Fay III; William Bell; Elizabeth Martin; Paul Friday; David Findley; J. Steven Landefeld; Dennis J. Fixler; Ralph H. Kozlow; Alan C. Lorish; Rosemary D. Marcus; Brent R. Moulton; Sumiye O. Okubo; John W. Ruser; James K.

White; Susan Offutt; Jane Molloy; Suzette Kern; Carl Cox; Keith Hall and Elizabeth R. Anderson.

FOR FURTHER INFORMATION CONTACT: Nancy Osborn, (301) 763–3727.

Dated: July 13, 2005.

James K. White,

Associate Under Secretary for Management, Chair, Performance Review Board.

[FR Doc. 05–14411 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–BS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members may be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the Committees will not be compensated for their services.

The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment). To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Yvette Springer on (202) 482–4814.

Dated: July 14, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–14415 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory committee; Notice of Open Meeting

The Materials Technical Advisory Committee (MTAC) will meet on August 4, 2005, 10:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda

1. Opening remarks and introductions.
2. Ambassador Don Mahley: Briefing on status of the Biological Weapons Convention (BWC) and codes of conduct discussions recently held in Geneva.
3. Report on status of addition of select agents list to the Commerce Commodity Control List (CCL).
4. Selection of date for next meeting.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to Yvette Springer at *Yspringer@bis.doc.gov.*

For more information contact Yvette Springer on (202) 482–4814.

Dated: July 14, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–14413 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council; Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on September 22, 2005, 10 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Bureau of Industry and Security (BIS) and Export Administration update.
3. Export Enforcement update.
4. Presentation of papers or comments by the public.

Closed Session

5. Discussion of matters properly classified under Executive order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to Ms.

Yvette Springer at *Yspringer@bis.doc.gov.*

A Notice of Determination to close meetings, or portions of meetings, of the PECSEA to the pubic on the basis of 5 U.S.C. 552b(c) was approved on October 8, 2003, in accordance with the Federal Advisory Committee Act.

For more information, call Ms. Springer on (202) 482–4814.

Dated: July 13, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–14414 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2006.

	Period to be reviewed
Antidumping duty proceedings	
Japan: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe, A–588–850	06/01/04–05/31/05
JFE Stell Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd.	
Japan: Certain Hot-Rolled Carbon Steel Flat Products, A–588–846	06/01/04–05/31/05
Kawasaki Steel Corporation	
JFE Steel Corp.	
Taiwan: Carbon Steel Plate, A–583–080	06/01/04–05/31/05
China Steel Corporation	
Taiwan: Certain Stainless Steel Butt-Weld Pipe Fittings, A–583–816	06/01/04–05/31/05
Censor International Corporation	
Liang Feng Stainless Steel Fitting Co., Ltd.	
PFP Taiwan Co., Ltd.	
Ta Chen Stainless Steel Pipe Co., Ltd.	
Tru-Flow Industrial Co., Ltd.	
The People's Republic of China: Folding Metal Tables and Chairs [1], A–570–868	06/01/04–05/31/05
Anji Jiu Zhou Machinery Co., Ltd.	
Feili Furniture Development Limited Quanzhou City	
Feili Furniture Development Co., Ltd.	
Feili Group (Fujian) Co., Ltd.	
Feili (Fujian) Co., Ltd.	
New-Tec Integration (Xiamen) Co., Ltd.	
Xiamen Zehui Industry Trade Co.	
Yixiang Blow Mold Yuyao Co., Ltd.	
Tapered Roller Bearings [2], A–570–601	06/01/04–05/31/05
Cina National Machinery Import & Export Corp.	
Chin Jun Industrial Ltd.	
Peer Bearing Company-Changshan	
Weihai Machinery Holding (Group) Company Ltd.	
Yantai Timken Company Limited	
Zhejiang Machinery Import & Export Corp.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of folding metal tables and chairs from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consist with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: July 15, 2005.

Holly A. Kuga,

Senior Office Director, AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. 05–14454 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–812]

Furfuryl Alcohol from Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on furfuryl alcohol from Thailand. The period of review is July 1, 2003, through June 30, 2004. This review covers imports of furfuryl alcohol from one producer/exporter.

We preliminarily determine that sales of subject merchandise have not been made at less than normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to liquidate entries of furfuryl alcohol from Indorama Chemicals (Thailand) Ltd. without regard to antidumping duties. We invite interested parties to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1276.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1995, the Department published an antidumping duty order on furfuryl alcohol from Thailand. *See Furfuryl Alcohol from Thailand: Notice of Amended Final Antidumping Duty Determination and Order*, 60 FR 38035 (July 25, 1995). On December 12, 2002, the Department published the final results of the first administrative review of the antidumping duty order on furfuryl alcohol from Thailand. *See Furfuryl Alcohol from Thailand: Notice of Final Results of Antidumping Administrative Review*, 67 FR 76380 (December 12, 2002) (''*FA First Review*'').

On July 1, 2004, the Department published its *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 39903 (July 1, 2004). On July 29, 2004, Penn Specialty Chemicals, Inc. (''petitioner'') requested that the Department conduct an administrative review of Indorama Chemicals (Thailand), Ltd. (''IRCT''), a producer and exporter of furfuryl alcohol from Thailand.

In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on August 30, 2004. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 52857 (August 30, 2004). The period of review (''POR'') is July 1, 2003, through June 30, 2004.

An antidumping duty questionnaire was sent to IRCT on September 10, 2004. We received a timely response from IRCT on October 17, 2004. On November 11, 2004, the petitioner submitted an allegation that IRCT made sales of the subject merchandise below the cost of production and requested that the Department initiate a sales–below-cost investigation. On November 12, 2004, IRCT submitted comments on the petitioner's allegations. On November 18, 2004, the petitioner submitted rebuttal comments on IRCT's original comments.

We issued a supplemental questionnaire regarding IRCT's responses to sections A, B, and C of the Department's original questionnaire on December 8, 2004. On December 9, 2004, the Department initiated a sales below cost investigation of IRCT. *See* December 9, 2004, Memorandum from Team to Susan Kuhbach entitled ''Allegation of Sales Below the Cost of Production for Indorama Chemicals (Thailand), Inc., ''which is in the Department's Central Records Unit, located in Room B–099 of the main Department building (''CRU''). We received a timely response from IRCT to the Department's December 8, 2004, supplemental questionnaire on December 22, 2004.

We received IRCT's response to the Department's cost questionnaire on January 18, 2005. We issued an additional supplemental questionnaire on February 10, 2005. On February 14, 2005, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), we published a notice extending the time limit for the completion of the preliminary results in this case by 31 days (*i.e.*, until no later than May 4, 2005). *See* 70 FR 7469. We received a timely response to the second supplemental questionnaire from IRCT on February 22, 2005. On March 17, 2005, the petitioner submitted comments on IRCT's response to the Department's second supplemental questionnaire. On April 8, 2005, we issued a third supplemental questionnaire to IRCT. On April 18, 2005, in accordance with section 751(a)(3)(A) of the Act, we published a notice extending the time limit for the completion of the preliminary results in this case by 88 days (*i.e.*, until no later than August 1, 2005). *See* 70 FR 20103. On April 22, 2005, we received a timely response from IRCT to the Department's April 8, 2005, supplemental questionnaire. We issued a fourth supplemental questionnaire to IRCT on June 6, 2005. We received a timely response on the fourth supplemental questionnaire from IRCT on June 14, 2005.

Scope of the Order

The merchandise covered by this order is furfuryl alcohol (C4H3OCH2OH). Furfuryl alcohol is a primary alcohol, and is colorless or pale yellow in appearance. It is used in the manufacture of resins and as a wetting agent and solvent for coating resins, nitrocellulose, cellulose acetate, and other soluble dyes.

The product subject to this order is classifiable under subheading 2932.13.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Fair Value Comparisons

To determine whether sales of furfuryl alcohol by IRCT to the United States were made at less than normal value (''NV''), we compared the export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted–average sales prices of the foreign like product, where there were sales made in the ordinary course of trade, as discussed in the ''Normal Value'' section of this notice.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by IRCT covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In making product comparisons, consistent with the *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from Thailand: Final Determination of Sales at Less Than Fair Value*, 60 FR 22557 (May 8, 1995) and *Furfuryl Alcohol from Thailand: Notice of Amended Final Antidumping Duty Determination and Order*, 60 FR 38035 (July 25, 1995) (collectively ''LTFV Final''), we matched foreign like products based on the physical characteristics reported by IRCT.

Export Price

We calculated EP in accordance with section 772(a) of the Act because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States and because constructed export price methodology was not otherwise warranted. We based EP on the packed delivered, freight–on-board, cash–in-freight, or the delivery–duty paid price to unaffiliated purchasers in the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included foreign inland freight, country of manufacture inland insurance, brokerage and handling, international freight, and marine insurance.

It is normally the Department's practice to confirm that the duty drawback adjustment claimed by the respondent meets the Department's two–pronged criteria for determining whether the duty drawback adjustment is appropriate. We have determined that only one of the reported inputs used in the production of furfuryl alcohol meets the two–pronged criteria. Therefore, we made an adjustment to the starting price for duty drawback to account for import duties paid on the importation of a single input used in the production of the subject merchandise. For an in–depth explanation of these changes, *see* Memorandum from Case Analyst to File, ''Preliminary Results Calculation Memorandum for Indorama Chemicals (Thailand) Ltd.,'' (''*Prelim Calc Memo*'') dated August 1, 2005, available in the Department's CRU.

Normal Value

A. *Home Market Viability*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of IRCT's home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with 19 CFR 351.404(b)(2) of the Department's regulations. Because IRCT's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

B. *Cost of Production*

As discussed in the ''Background'' section above there were reasonable grounds to believe or suspect that IRCT made sales of the subject merchandise in its comparison market at prices below the cost of production (''COP''), as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we requested that IRCT respond to section D, the cost of production/constructed value section of the questionnaire.

We conducted the COP analysis as described below:

1. *Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of IRCT's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses (''G&A''), interest expenses, and home market packing costs. We relied on the COP information provided by IRCT, except in the following instances.

IRCT reported that it did not include in its calculated G&A the cost IRCT incurred for the depreciation of certain assets. It is the Department's normal practice to include the depreciation figure for assets in a company's reported G&A expenses if these assets relate to the general operations of the company. Therefore, we have recalculated IRCT's reported G&A expenses to include these costs. *See* Prelim Calc Memo.

2. *Test of Home Market Sales Prices*

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales of the foreign like product during the POR, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. The prices were exclusive of any applicable movement charges or indirect selling expenses. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit the recovery of all costs within a reasonable period of time.

3. *Results of the COP Test*

Pursuant to section 773(b)(1) of the Act, where less than 20 percent of the respondent's sales of a given product are made at prices below the COP, we do not disregard any below–cost sales of that product because we determine that in such instances the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we determine that in such instances the below cost sales represent ''substantial quantities'' within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales are made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for all products, less than 20 percent of the comparison market sales were at prices less than the COP. Therefore, we did not disregard any home market sales in determining NV, in accordance with section 773(b)(1).

C. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id*.; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales, we consider the starting prices before any adjustments. *See Micron Technology, Inc. v. United States, et. al.*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. EP sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales to a different LOT in the comparison market, where available data make it practical, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

IRCT reported one level of trade in the home market and one level of trade in the U.S. market. IRCT reported making sales only to end–users in the home market. In the United States, IRCT reported that it made sales to a trading company. We examined the information IRCT reported regarding its marketing process for making the reported comparison market and U.S. sales, including the type and level of selling activities performed and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users). Based on our analysis, we found that the single level of trade in the United States is identical to the single level of trade in the comparison market. Thus, we preliminarily find that a LOT adjustment for IRCT is not warranted.

D. *Calculation of Normal Value Based on Comparison Market Prices*

We calculated NV based on the delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. In accordance with section 773(a)(6)(B)(ii) of the Act, we made deductions for inland freight and inland insurance.

Furthermore, where appropriate, we made adjustments for differences in circumstances of sale (''COS'') in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 by deducting direct selling expenses incurred on comparison market sales (credit expenses), and adding U.S. direct selling expenses (credit expenses). We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

Preliminary Results of the Review

We preliminarily find that the following dumping margin exists for the period July 1, 2003, through June 30, 2004.

Manufacturer/Exporter	Margin
Indorama Chemicals (Thailand) Ltd.	0.00

Assessment Rates

Upon completion of this administrative review, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer (or customer) of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer (or customer)-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries.

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Cash Deposit Rates

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of furfuryl alcohol from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted–average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, any prior review, or the original less than fair value investigation, the cash deposit rate will be 7.82 percent, the ''all others'' rate established in the *LTFV Final*.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will be 37 days after the publication of this notice, or the first business day thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR

[1] The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 15, 2005.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3905 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 31, 2005, the Department of Commerce (the Department) published in the **Federal Register** (70 FR 4818) a notice announcing the initiation of the administrative review of the antidumping duty order on honey from the People's Republic of China (PRC). The period of review (POR) is December 1, 2003, to November 30, 2004. On June 22, 2005, petitioners and Wuhan Bee Healthy Co., Ltd. (Wuhan Bee) withdrew their requests for an administrative review of Wuhan Bee. This review is now being rescinded for Wuhan Bee.

EFFECTIVE DATE: July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Anya Naschak or Kristina Boughton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone; (202) 482–6375 and (202) 482–8173, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department of Commerce published in the **Federal Register** an antidumping duty order covering honey from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On December 1, 2004, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 69889. On December 30, 2004, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners), requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on honey from the PRC for 19 companies covering the period December 1, 2003, through November 30, 2004. On December 30, 2004, and January 3, 2005, nine Chinese companies requested an administrative review of their respective companies. The Department notes that petitioners' request covered these nine companies as well.

On January 31, 2005, the Department initiated an administrative review of 19 Chinese companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005). On March 29, 2005, the Department rescinded this review with respect to seven companies because petitioners, the only party to request a review for these companies, withdrew their request for review. *See Notice of Partial Rescission of Antidumping Duty Administrative Review: Honey from the People's Republic of China*, 70 FR 15836 (March 29, 2005).

On May 25, 2005, the Department rescinded this review with respect to Anhui Native Produce Import and Export Corp. and Inner Mongolia Autonomous Region Native Produce and Animal By–Products Import and Export Corporation because petitioners, the only party to request a review for these companies, withdrew their request for review. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 30082 (May 25, 2005).

On June 22, 2005, petitioners filed a letter withdrawing their request for review of Wuhan Bee (respondent), and on the same day, respondent also filed a letter withdrawing its request for an administrative review. Both parties originally requested a review of Wuhan Bee and both parties requested that the Department withdraw the review despite the request coming after the 90–day withdrawal period because both parties have withdrawn their original requests for review and because the Department has not yet committed substantial resources to reviewing Wuhan Bee. Further, both parties stated that the Department may rescind a review after the 90–day deadline, according to its regulations, when it determines it is reasonable. Respondent further noted that there are no other Wuhan Bee importers or other interested parties that could pose any valid objection to the rescission of the review.

Rescission of Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. It further states that the Secretary may extend this time limit if the Secretary finds it reasonable to do so. Although petitioners and respondent withdrew their review requests with respect to Wuhan Bee after the 90–day deadline, the Department finds it reasonable to extend the deadline for parties to withdraw their request for review with respect to Wuhan Bee in accordance with 19 CFR 351.213(d)(1). The Department finds it reasonable to extend the withdrawal deadline with respect to Wuhan Bee because the Department has not yet committed substantial resources to reviewing Wuhan Bee in the instant review and because both parties who requested the review have subsequently withdrawn their requests. Therefore, we are partially rescinding this review of the antidumping duty order on honey from the PRC covering the period December 1, 2003, through November 30, 2004, with respect to Wuhan Bee.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice is issued and published in accordance with sections 751 and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: July 14, 2005.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–3909 Filed 7–20–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Anya Naschak or Kristina Boughton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone; (202) 482–6375 and (202) 482–8173, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order covering honey from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On December 1, 2004, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 69889. On December 30, 2004, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners), requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on honey from the PRC for 19 companies[1] covering the period December 1, 2003, through November 30, 2004. On December 30, 2004, and January 3, 2005, nine Chinese companies requested an administrative review of their respective companies. The Department notes that petitioners' request covered these nine companies as well.

On January 31, 2005, the Department initiated an administrative review of 19 Chinese companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005). On March 29, 2005, the Department rescinded this review with respect to seven companies because petitioners, the only party to have requested a review for these companies, withdrew their request. *See Notice of Partial Rescission of Antidumping Duty Administrative Review: Honey from the People's Republic of China*, 70 FR 15836 (March 29, 2005).

On April 28, 2005, petitioners withdrew their request for review of Anhui Native Produce Import and Export Corp. (Anhui Native) and on April 29, 2005, petitioners withdrew their request for review of Inner Mongolia Autonomous Region Native Produce and Animal By–Products Import and Export Corporation (Inner Mongolia). On May 25, 2005, the Department rescinded this review with respect to Anhui Native and Inner Mongolia, because petitioners, the only party to request a review of these two companies, withdrew their request. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 30082 (May 25, 2005).

On June 20, 2005, petitioners requested that the Department extend the date for the issuance of the preliminary results in this proceeding from 245 days to 365 days, due to the large number of companies in the proceeding, complex issues of affiliation for several companies under review, and the difficulty in finding up–to-date factor valuation data, particularly for raw honey.

Extension of Time Limits for Preliminary Results

Pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides that the Department shall issue the final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245–day period to 365 days and the 120–day period to 180 days.

The preliminary results of this administrative review are currently due no later than September 2, 2005. The Department finds that it is not practicable to complete the preliminary results of this administrative review within this time limit because it needs additional time to analyze the questionnaire responses, issue appropriate supplemental questionnaires and conduct verifications, and research surrogate value data, particularly for raw honey. Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of these preliminary results until no later than December 9, 2005, or 98 days. The deadline for the final results of the administrative review continues to be 120 days after the date the publication of the preliminary results, unless extended.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

[1] Among these 19 companies are ''Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp.,'' and ''Inner Mongolia Autonomous Region Native Produce and Animal By-Products.'' These two names refer to the same company and the review is, therefore, being rescinded with respect to both iterations of the name.

Dated: July 14, 2005.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–3910 Filed 7–20–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of the Eighth New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is currently conducting the eighth new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC'') covering the period February 1, 2004, through July 31, 2004. This review covers one exporter.

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 (''the Act''), we have preliminarily determined that sales have not been made at less than normal value (''NV'') with respect to the exporter who participated in this review. If the preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to not assess antidumping duties on entries of merchandise subject to this review.

Interested parties are invited to comment on the preliminary results. We will issue the final results no later than 90 days from the date of publication of this notice.

EFFECTIVE DATE: July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Amber Musser or Stephen F. Berlinguette, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1777 and (202) 482–3740, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999). The Department received a timely request from Blue Field (Sichuan) Food Industrial Co., Ltd. (''Blue Field''), in accordance with 19 CFR 351.214(b) and (c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC, which has a February annual anniversary month and an August semi–annual anniversary month. On September 24, 2004, the Department found that Blue Field's request for review appeared to satisfy the requirements of 19 CFR 351.214(b) and initiated the new shipper antidumping duty review. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of Eighth New Shipper Antidumping Duty Review*, 69 FR 57264 (September 24, 2004). On September 30, 2004 the Department provided the parties an opportunity to submit publicly available information for consideration in the preliminary results.

On October 1, 2004, the Department requested from CBP copies of all customs documents pertaining to the entry of certain preserved mushrooms from the PRC exported by the respondent during the period of February 1, 2004, through July 31, 2004. *See Memorandum from James C. Doyle, Director, Office 9, to William R. Scopa of CBP*, dated October 1, 2004. We issued the original questionnaire to Blue Field in September 2004. Responses to the questionnaire were received in October 2004. We issued supplemental questionnaires to Blue Field and an importer–specific questionnaire to Blue Field's U.S. importer in December 2004. We received responses to the questionnaires in December 2004 and January 2005.

From January 10 through January 14, 2005, the Department conducted verification of the information submitted by Blue Field in accordance with 782(i) of the Act and 19 CFR 351.307. On February 8, 2005, we issued the verification report for Blue Field. *See Memorandum to the File from Amber Musser and Steve Winkates through Brian C. Smith, Re: Verification of the Response of Blue Field (Sichuan) Food Industrial Co., Ltd. in the Eighth Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China*, dated February 8, 2005 (''Blue Field verification report'').

On March 22, 2005, the Department published in the **Federal Register** a notice of postponement of the preliminary results until no later than July 14, 2005 (70 FR 14444).

Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are pre–salted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) all other species of mushrooms, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this order is currently classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Period of Review

The period of review (''POR'') covers February 1, 2004, through July 31, 2004.

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[1] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. The Department's scope determination was affirmed by the Court of Appeals for the Federal Circuit in *Tak Fat Trading Company, et. al. v. United States*, et. al., 396 F.3d 1378 (Fed. Cir., 2005).

Verification

As provided in section 782(i) of the Act, as amended, we verified information provided by Blue Field. We used standard verification procedures, including on–site inspection of Blue Field's facility and examination of relevant sales and financial records. Our verification results are outlined in the Blue Field verification report.

New Shipper Status

Consistent with our practice, we investigated the *bona fide* nature of the two sales made by Blue Field for this new shipper review. We found no evidence that the sales in question were not *bona fide* sales. Based on our investigation into the *bona fide* nature of the sales, the questionnaire responses submitted by the company, and our verification thereof, we preliminarily determine that the respondent has met the requirements to qualify as a new shipper during the POR, and that it was not affiliated with any exporter or producer that had previously shipped subject merchandise to the United States. Therefore, for purposes of these preliminary results of the review, we are treating the respondent's sales of certain preserved mushrooms to the United States as an appropriate transaction for this new shipper review.

Separate Rates

In proceedings involving non–market-economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate (*i.e.*, a PRC–wide rate).

Blue Field is a limited liability company registered in the PRC. Thus, a separate–rates analysis is necessary to determine whether the export activities of this respondent are independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996). To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate–rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. *De Jure* Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over exporter activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

In prior cases involving products from the PRC, the Department has examined the following PRC laws for purposes of determining whether there is an absence of *de jure* control with respect to a respondent's export functions: the 1994 ''Foreign Trade Law of the People's Republic of China;'' the ''Company Law of the PRC,'' effective as of July 1, 1994; and ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988. *See* July 22, 2004, Memorandum to the File, which places the above–referenced laws on the record of this proceeding segment.

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of limited liability companies absent proof on the record to the contrary. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (''Furfuryl Alcohol''), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial–Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 29571 (June 5, 1995).

The respondent has placed on the record a number of documents to demonstrate absence of *de jure* control, including the Foreign Trade Law of the People's Republic of China (May 12, 1994) and the Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations (June 3, 1988). The Department has analyzed such PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). At verification, we found that the respondent's business license and Certificate of Approval for enterprises with foreign trade rights in the PRC were granted in accordance with these laws. For further information, see the Blue Field verification report. Therefore, we preliminarily determine that there is an absence of *de jure* control over the respondent's export activities.

2. *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See Silicon Carbide, 59 FR at 22587, and Furfuryl Alcohol, 60 FR at 22544. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22587 and *Furfuryl Alcohol*, 60 FR at 22545.

Blue Field has asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. We examined documentation at verification which substantiated Blue Field's claims as noted above. *See* the Blue Field verification report, pages 3–11. As a result, there is a sufficient basis to determine preliminarily that this respondent has demonstrated a *de facto* absence of government control of its export functions and is entitled to a separate rate. Consequently, we have preliminarily determined that Blue Field has met the criteria for the application of separate rates.

Normal Value Comparisons

To determine whether Blue Field's two sales of subject merchandise to the United States were made at prices below NV, we compared the export prices to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

We used export price (''EP'') methodology in accordance with section 772(a) of the Act because the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and constructed export price was not otherwise indicated.

We calculated EP based on the packed FOB China port price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India (*see* ''Surrogate Country'' section below for further discussion of our surrogate–country selection).

To value foreign inland trucking charges, we used truck freight distances and rates published by the Indian Freight Exchange obtained from the following website: http://www.infreight.com. To value foreign inland train freight charges, we used data contained in the July 2001 *Reserve Bank of India Bulletin*. To value foreign brokerage and handling expenses, we relied on October 1999–September 2000 information reported in the public U.S. sales listing submitted by Essar Steel Ltd. in the antidumping investigation of *Certain Hot–Rolled Carbon Steel Flat Products from India: Final Determination of Sales at Less Than Fair Value*, 67 FR 50406 (October 3, 2001).

Normal Value

A. Non–Market-Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). None of the parties to this review has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market–economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India was among the countries comparable to the PRC in terms of overall economic development. *See Surrogate Country Request Memorandum*, dated September 28, 2004. In addition, based on publicly available information placed on the record (e.g., world production data), India is a significant producer of the subject merchandise. Accordingly, we considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate–country selection. *See Memorandum Re: Seventh Antidumping Duty New Shipper Review on Certain Preserved Mushrooms from the People's Republic of China: Selection of a Surrogate Country*, dated September 28, 2004.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by Blue Field which produced the preserved mushrooms it exported to the United States during the POR. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian values.

Based on our verification findings, we revised the per–unit factor reported for soil and the reported inland freight distances reported in Blue Field's responses. *See* Blue Field verification report at pages 14 and 16.

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency or in U.S. dollars, we adjusted for inflation using wholesale price indices (''WPIs'') published in the International Monetary Fund's *International Financial Statistics (''IFS''). See Memorandum Re: Factors Valuation For the Preliminary Results, from Stephen F. Berlinguette, International Trade Compliance Analyst to James C. Doyle, Director, Office 9*, dated July 14, 2005, for a detailed explanation of the methodology used to calculate surrogate values.

Except where specified below, we valued raw material inputs using the weighted–average unit import values from the POR derived from the *World Trade Atlas Trade Information System (Internet Version 4.3e) (''World Trade Atlas'')*. The source of these values was the Directorate General of Commercial Intelligence and Statistics of the Indian Ministry of Commerce and Industry. Below is a listing of surrogate values that utilized sources other than POR–contemporaneous *World Trade Atlas* data.

Blue Field produced (rather than purchased) the fresh mushrooms which it used in the mushroom canning process during the POR. Therefore, we valued the inputs which this company used to produce the fresh mushrooms which were canned during the POR. To value spawn, we used an average price based on data contained in the 2003–2004 financial reports of Agro Dutch Foods, Ltd. (''Agro Dutch''), Flex Foods Ltd. (''Flex Foods'') and Premier Explosives, Ltd. (''Premier Explosives'') (i.e., three Indian producers of the subject merchandise). To value cow manure, we averaged data contained in the above–referenced Flex Foods and Agro Dutch financial reports. To value rice straw, we used data from the 2003–2004 Premier Explosives financial report. For soil, we used 2003–2004 price information obtained from a project report issued in December 2004 by India's National Bank for Agriculture and Rural Development entitled *Integrated Project on Production and Processing of Button Mushrooms for Export*, available online at: http://www.nabard.org/roles/ms/ap/mushroom.htm.

Blue Field produced all of the cans which it used to sell preserved mushrooms to the U.S. market during the POR. Therefore, for can–making materials, we valued tin plate using January 2002–December 2002 average Indian import values from *World Trade Atlas*, and we valued copper conducting wire using January 2003–December 2003 average Indian import values from

World Trade Atlas, as its useable form is consumed in the production of cans.

Because there is insufficient evidence on the record to account for the factors involved in recovering the resulting scrap, we did not apply a scrap offset. Parties requesting a byproduct offset have the burden of presenting to the Department not only evidence that the generated byproduct is sold or re–used in the production of the subject merchandise, but also all the information necessary for the Department to incorporate such offsets into the margin calculation. In this instance, however, Blue Field did not provide evidence that post–production copper wire scrap was sold or re–used. Moreover, Blue Field did not provide either the complete set of factors necessary for the reworking of the scrap copper wire into a useable form, nor did it provide an attempt at a valuation for such factors. As a result of these considerations, we preliminarily determine that Blue Field did not meet its burden of adequately documenting the claimed byproduct offset and, as a result, we did not apply it.

To value salt, we used and inflated an average import price based on January 2002–December 2003 data contained in *World Trade Atlas* because we were unable to obtain a more current value.To value water we used January 2003 data available on the Maharastra Industrial Development Corporation's website and was used in the *Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 70 FR 34082–34086 (June 13, 2005). We used data contained in the 2002–2003 financial report of Flex Foods to calculate and inflate a POR value for super phosphate.

We valued labor based on a regression–based wage rate, in accordance with 19 CFR 351.408(c)(3). *See Expected Wages of Selected Non–market Economy Countries*, from the Import Administration website at: http://ia.ita.doc.gov/wages/index.html.

To value electricity, we used 2000 Indian price data from the International Energy Agency's (''IEA'') report, ''Electricity Prices for Industry,'' contained in the *2002 Key World Energy Statistics from the IEA*. To value steam coal, we used February 2004–July 2004 Indian import data from *World Trade Atlas*, and added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

To value factory overhead and selling, general, and administrative (''SG&A'') expenses, and profit, we used the 2003–2004 financial reports of Agro Dutch and Flex Foods, both Indian producers of the subject merchandise.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997), we revised our methodology for calculating source–to-factory surrogate freight for those material inputs that are valued, based all or in part, on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input–specific basis.

Preliminary Results of the Review

We preliminarily determine that the following margin exists during the period February 1, 2004, through July 31, 2004:

Manufacturer/producer/exporter	Margin Percent
Blue Field (Sichuan) Food Industrial Co., Ltd.	0.00

We will disclose the calculations used in our analysis to the parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on September 12, 2005.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted no later than August 22, 2005. Rebuttal briefs, limited to issues raised in the case briefs, will be due no later than August 29, 2005. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue; and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of the review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 90 days after the date of issuance of the preliminary results.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess and liquidate, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions for the company subject to this review directly to CBP within 15 days of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

Upon completion of this review, we will require cash deposits at the rate established in the final results as further described below.

Bonding will no longer be permitted to fulfill security requirements for shipments of mushrooms from the PRC produced and exported by Blue Field that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of subject merchandise from Blue Field entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Blue Field, no cash deposit will be required if the cash deposit rate calculated in the final results is zero or *de minimis*; (2) for subject merchandise exported by Blue Field but not manufactured by Blue Field, the cash deposit rate will continue to be the PRC–wide rate (*i.e.*, 198.63 percent); and (3) for subject merchandise produced by Blue Field but not exported by Blue Field, the cash deposit rate will be the rate applicable to the exporter.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: July 14, 2005.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3906 Filed 7–20–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 23, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** (70 FR 14643) a notice announcing the initiation of the sixth administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (''PRC''). The period of review (''POR'') is February 1, 2004, to January 31, 2005. This review is now being rescinded for Blue Field (Sichuan) Food Industrial Co., Ltd.; China Processed Food Import & Export Company; China National Cereals, Oils, and Foodstuffs Import & Export Corporation; COFCO (Zhangzhou) Food Industrial Co.; Ltd., Fujian Zishan Group Co.; Xiamen Jiahua Import & Export Trading Co., Ltd.; Fujian Yu Xing Fruit and Vegetable Foodstuff Development Co., Ltd.[1]; Shandong Jiufa Edible Fungus Co., Ltd.; Guangxi Hengxian Pro–Light Foods, Inc.; Guangxi Yizhou Dongfang Cannery; Inter–foods D.S. Co., Ltd.; Mei Wei Food Industry Co., Ltd.; Nanning Runchao Industrial Trade Co., Ltd.; Raoping Xingyu Foods Co., Ltd.; Xiamen Jiahua Import & Export Trading Co., Ltd.; Xiamen Zhongjia Import and Export Co., Ltd.; Shanghai Superlucky Import & Export Company, Ltd.; Shantou Hongda Industrial General Corporation; Shenxian Dongxing Foods Co., Ltd.; Shenzhen Qunxingyuan Trading Co., Ltd.; Tak Fat Trading Co.; Xiamen International Trade & Industrial Co., Ltd.; Zhangzhou Hongning Canned Food Factory; Zhangzhou Jingxiang Foods Co., Ltd.; Zhangzhou Longhai Lubao Food Co., Ltd.; and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd., (collectively ''the Twenty–five Companies'') because the only requesting party withdrew its request in a timely manner.

EFFECTIVE DATE: July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Stephen F. Berlinguette, AD/CVD Operations Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4003, Washington, DC 20230; telephone (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999).

On February 1, 2005, the Department published a *Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 70 FR 5136. On February 28, 2005, the Petitioner requested, in accordance with section 751(a) of the Tariff Act of 1930 (''the Act'') and 19 CFR 351.213(b), an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC for thirty companies covering the period February 1, 2004, through January 31, 2005. On February 7, 2005, and February 25, 2005, four Chinese companies requested an administrative review of their respective companies. The Department notes that these four companies were included in the Petitioner's February 28, 2005, request.

On March 23, 2005, the Department initiated an administrative review of thirty Chinese companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 14643 (March 23, 2005). On June 29, 2005, the Petitioner filed a timely letter withdrawing its request for review of the Twenty–five companies.

Rescission of Review

Pursuant to section 351.213(d)(1) of the Department's regulations, if a party that requests a review withdraws the review request within ninety days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review. The Petitioner withdrew its review request with respect to the Twenty–five Companies in a timely manner, in accordance with 19 CFR 351.213(d)(1). Since the Petitioner was the only party to request an administrative review of the Twenty–five Companies, we are partially rescinding this review of the antidumping duty order on certain preserved mushrooms from the PRC covering the period February 1, 2004, through January 31, 2005, with respect to the Twenty–five Companies.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information

[1] The Department originally made an inadvertent typographical error by neglecting to include the term 'Development' in this company's name in the above-referenced *Federal Register* initiation notice.

disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751 and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: July 14, 2005.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–3911 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–809]

Stainless Steel Butt–Weld Pipe Fittings from Malaysia: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 21, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce; 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION: On February 28, 2005, the Department of Commerce (the Department) received a timely request from Schultz (Mfg.) Sdn. Bhd. (Schultz), to conduct an administrative review of the antidumping duty order on stainless steel butt–weld pipe fittings from Malaysia, for the period February 1, 2004, through January 31, 2005. On March 23, 2005, the Department initiated an administrative review and published a notice of initiation in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005). On March 23, 2005, Schultz withdrew its request for an administrative review. In accordance with 19 CFR 351.213(d)(1), the Department is rescinding this review because the requestor of this review has timely withdrawn its request for review, and no other interested party has requested a review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because Schultz withdrew its review request within the 90-day time limit, the Department is rescinding this review.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties for this rescinded company shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

This notice is published in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 14, 2005.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–3904 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of opportunity to serve as a member of one of the fifty-nine District Export Councils.

SUMMARY: The U.S. Department of Commerce is currently seeking expressions of interest from individuals in serving as a member of one of the fifty-nine District Export Councils (DECs) nationwide. The DECs are closely affiliated with the U.S. Export Assistance Centers (USEAC) of the U.S. Commercial Service. DECs combine the energy of more than 1,500 exporters and export service providers who promote U.S. exports. DEC members volunteer at their own expense.

DATES: Applications for nomination to a DEC must be received by the designated local USEAC representative by September 1, 2005.

FOR FURTHER INFORMATION: Contact: Les Williamson, National DEC Program Manager, the U.S. Commercial Service, tel. 202–482–4767.

SUPPLEMENTARY INFORMATION: DECs sponsor and participate in numerous trade promotion activities, as well as supply specialized expertise to small and medium-sized businesses that are interested in exporting.

Selection Process: About half of the approximately 30 positions on each of the 59 DECs are open for nominations for the 4-year term which begins on January 1, 2006 and ends December 31, 2009. Nominees are recommended by the local USEAC Director, in consultation with the DEC and other local export promotion partners. After a review process, nominees are selected and appointed to a DEC by the Secretary of Commerce. The office of the Deputy Assistant Secretary for Domestic Operations coordinates the DECs.

Membership Criteria: Each DEC is interested in nominating highly-motivated people. Appointment is based upon an individual's energetic leadership, position in the local business community, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to council activities. Members include exporters, export service providers and others whose profession supports U.S. export promotion efforts.

Authority: 15 U.S.C. 1501 *et seq.*, 15 U.S.C. 4721.

Dated: June 21, 2005.

Neal Burnham,

Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service.

[FR Doc. 05–14376 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; U.S. Measurement System Biophotonics Survey

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 19, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Dr. Marla Dowell, Mailcode 815.01, 325 Broadway, Boulder, CO 80305, Phone 303–497–7455 or via the Internet at *mdowell@boulder.nist.gov* or Dr. Grady White, 100 Bureau Drive, Mailstop 8520, Gaithersburg, MD 20899, Phone 301–975–5752, or via the Internet at *grady.white@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In order to maintain the current rapid advance of biophotonics in the U.S. and to enhance our competitiveness worldwide, key measurement tools must be in place. The right measurement capabilities will improve both manufacturing efficiency and quality, and promote acceptance of biophotonics-based instruments and technologies through improved interoperability. As a part of a wide-reaching effort to improve the U.S. technology base, the National Institute of Standards and Technology announces the road-mapping workshop ''Biophotonic Tools for Cell and Tissue Diagnostics''. This meeting will focus on diagnostic techniques involving the interaction between biological systems and photons. Through invited presentations by industry representatives, panel discussion, and the results of the survey given to workshop participants, the near- and far-term measurement needs will be evaluated. As a result of this workshop, a road-mapping document will be prepared on the measurement tools needed for biophotonic cell and tissue diagnostics. This will become a part of the larger road-mapping effort to be presented to the Nation as an assessment of the U.S. Measurement System. The information will be used to highlight measurement needs to the community and to facilitate solutions among key stakeholders in industry, government, and academia.

II. Method of collection

Information will be gathered in paper form from workshop participants.

III. Data

OMB Number: None.

Form Numbers: None.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Respondent Burden Hours: 10.

Estimated Total Annual Respondent Cost Burden: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 15, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–14327 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Period of Determination on Request for Textile and Apparel Safeguard Action on Imports from China

July 19, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Notice

SUMMARY: The Committee is extending through July 31, 2005, the period for making a determination on whether to request consultations with China regarding imports of other synthetic filament fabric (Category 620).

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

On November 8, 2004, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of other synthetic filament fabric (Category 620) due to the threat of market disruption (''threat case'').

The Committee determined this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. See Solicitation of Public Comment on Request for Textile and Apparel Action on Imports from China, 69 FR 70661 (Dec. 7, 2004).

On December 30, 2004, the Court of International Trade preliminarily enjoined the Committee from considering or taking any further action on this request and any other requests ''that are based on the threat of market disruption''. U.S. Association of Importers of Textiles and Apparel v. United States, 350 F. Supp. 2d 1342 (CIT 2004). On April 27, 2005 the Court of Appeals for the Federal Circuit granted the U.S. government's motion for a stay of that injunction, pending appeal. U.S. Association of Importers of Textiles and Apparel v. United States, Ct. No. 05-1209, 2005 U.S. App. LEXIS 12751 (Fed. Cir. June 28, 2005). Thus, CITA resumed consideration of this case.

The public comment period for this request had not yet closed when the injunction took effect on December 30, 2004. The number of calendar days remaining in the public comment period beginning with and including December 30, 2004 was 8 days. On May 9, 2005, therefore, the Committee published a notice in the **Federal Register** re-opening the comment period and inviting public comments to be received not later than May 17, 2005. See Rescheduling of Consideration of Request for Textile and Apparel Safeguard Action on Imports from China and Solicitations of Public Comments, 70 FR 24397 (May 9, 2005).

On April 6, 2005, the Committee received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of other synthetic filament fabric (Category 620) due to market disruption (''market disruption case''). The Committee determined that this request provided the information necessary for the Committee to consider the request and solicited public comments for a period of 30 days. See Solicitation of Public Comment on Request for Textile and Apparel Safeguard Action on Imports from China, 70 FR 23124 (May 4, 2005).

The Committee's Procedure, 68 FR 27787 (May 21, 2003) state that the Committee will make a determination within 60 calendar days of the close of the public comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination.

The 60-day determination period for the threat case expired on July 18, 2005. However, the Committee is unable to make a determination at this time; it is continuing to evaluate conditions in the U.S. market for other synthetic filament fabric and information obtained from public comments on both the threat and market disruption cases. The Committee is therefore extending the determination period to July 31, 2005. The Committee may, at its discretion, make such determination prior to July 31, 2005.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.05–14531 Filed 7–19–05; 1:59 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denial of Commercial Availability Request under the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA)

July 18, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Denial of the request alleging that certain woven bamboo/cotton fabric cannot be supplied by the domestic in commercial quantities in a timely manner under the AGOA and the CBTPA.

SUMMARY: On May 18, 2005 the Chairman of CITA received a petition from Columbia Sportswear Company alleging that certain woven bamboo/cotton fabric, of detailed specifications, classified in subheading 5516.42.0022 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requested that apparel articles of such fabrics be eligible for preferential treatment under the AGOA and the CBTPA. CITA has determined that the subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and, therefore, denies the request.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 211(a) of the CBTPA amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 2, 2000.

Background: The AGOA and the CBTPA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA and the CBTPA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271), CITA has been delegated the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On May 18, 2005, the Chairman of CITA received a petition from Columbia Sportswear Company alleging that certain woven bamboo/cotton fabric, of detailed specifications, classified in HTSUS subheading 5516.42.0022, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requested that apparel articles of such fabric be eligible for preferential treatment under the AGOA and the CBTPA.

On May 25, 2005, CITA published a **Federal Register** notice requesting public comments on the request, particularly with respect to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner. See Request for Public Comments on Commercial Availability Petition under the African Growth and Opportunity Act (AGOA) and the United States - Caribbean Basin Trade Partnership Act (CBTPA), 70 FR 30088 (May 25, 2005). On June 10, 2005, CITA and USTR offered to hold consultations with the House Ways and Means Committee and the Senate Finance Committee, but no consultations were requested. We also requested advice from the U.S. International Trade Commission and the relevant Industry Trade Advisory Committees.

Based on the information and advice received by CITA, public comments, and the report from the International Trade Commission, CITA found that there is domestic production, capacity, and ability to supply the subject fabric in commercial quantities in a timely manner.

On the basis of currently available information and our review of this request, CITA has determined that there is domestic capacity to supply the subject fabric in commercial quantities in a timely manner. The request from Columbia Sportswear Company is denied.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–3907 Filed 7–20–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 22, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 15, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan, Direct Loan, and Perkins Loan Discharge Applications.

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 29,543.

Burden Hours: 14,774.

Abstract: These forms will serve as the means of collecting the information necessary to determine whether a Federal Family Education Loan (FFEL) or Direct Loan borrower qualifies for a loan discharge based on school closure, false certification of student eligibility, or unauthorized signature. The school closure discharge application may also be used by Perkins Loan borrowers applying for a closed school discharge.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2739. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–14319 Filed 7–20–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF05–2021–000]

U.S. Department of Energy; Bonneville Power Administration; Notice of Filing

July 14, 2005.

Take notice that on June 30, 2005, U.S. Department of Energy, Bonneville Power Administration, (Bonneville) tendered for filing proposed rate adjustments for its 2006 Transmission and Ancillary Services Rates pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). Pursuant to Commission regulations 300.10 and 300.21, 18 CFR 300.10 and 300.21, Bonneville seeks interim approval of the proposed transmission and ancillary services effective October 1, 2005, followed by final confirmation and approval.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on July 21, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3878 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–435–001]

Crossroads Pipeline Company; Notice of Compliance Filing

July 15, 2005.

Take notice that on July 12, 2005, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 74, with a proposed effective date of September 1, 2005.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR

385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3894 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–013]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

July 14, 2005.

Take notice that on July 7, 2005, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed below to become effective August 6, 2005. Dauphin Island states that these tariff sheets reflect changes to its statement of negotiated rates.

Twenty-Second Revised Sheet No. 9,
Seventeenth Revised Sheet No. 10.

Dauphin Island states that copies of the filing are being served on its customers and other interested parties.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3884 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–103–000]

Duke Energy Corporation and Cinergy Corp.; Notice of Filing

July 15, 2005.

Take notice that on July 12, 2005, Duke Energy Corporation and its subsidiaries that are public utilities subject to the Commission's jurisdiction and Cinergy Corp. and its subsidiaries that are public utilities subject to the Commission's jurisdiction (collectively, Applicants) submitted a filing pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby: (1) The merger of Duke Energy and Cinergy through an all-stock transaction in which each common share of Cinergy will be converted into 1.56 shares of Duke Energy; and (2) the subsequent internal restructuring and consolidation of Duke Energy's and Cinergy's subsidiaries to establish a more efficient corporate structure for the combined company.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 12, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3887 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG05–83–000, EG05–84–000, EG05–85–000, EG05–86–000, EG05–87–000]

G–Flow Wind, LLC; Green Acres Breeze, LLC; Minnesota Breeze, LLC; Wolf Wind Enterprises, LLC; Sunset Breeze, LLC; Notice of Applications for Commission Determination of Exempt Wholesale Generator Status

July 15, 2005.

Take notice that on July 8 and 11, 2005, G–Flow Wind, LLC, Green Acres Breeze, LLC, Minnesota Breeze, LLC, Wolf Wind Enterprises, LLC and Sunset Breeze, LLC, (collectively, Applicants), filed with the Commission applications for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicants state they are a Minnesota limited liability companies and will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities, and selling energy at wholesale. Applicants further state that they are developing a 125 MW wind power generation facility to be located in Nobles County, Minnesota. The Applicants further state that the project will be an eligible facility pursuant to section 32(a)(2) of the PUHCA.

Applicants state that a copy of the filings have been served on the Minnesota Public Utility Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on July 29, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3888 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–391–000]

Gas Research Institute; Notice of True Up and Accounting Report

July 15, 2005.

Take notice that on July 1, 2005, Gas Research Institute (GRI) tendered for filing the True Up and Accounting Report in compliance with the settlement approved by the Commission in this and other dockets in *Gas Research Institute*, 83 FERC ¶ 61,093, *on reh'g*, 83 FERC ¶ 61,331 (1998) (1998 Settlement).

GRI states that the 1998 Settlement's Article II, *Section 1.1 True Up and Accounting* provision, requires GRI to file the instant report. GRI submits that the report: (1) provides a straightforward comparison of GRI collections pursuant to the 1998 Settlement with approved budgets; and (2) provides consideration of GRI's efforts to minimize over-collections and the need for any refunds. The report shows that during the period 1998 to 2004, GRI over-collected $46,909.98, which amounts to 0.006 percent of its overall funding target of $723.0 million.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on July 22, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3896 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–074]

Gas Transmission Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

July 14, 2005.

Take notice that on June 30, 2005, Gas Transmission Northwest Corporation (''GTN'') tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective July 1, 2005:

Twenty-Second Revised Sheet No. 15,
Fourth Revised Sheet No. 24,
First Revised Sheet No. 26,
First Revised Sheet No. 27.

GTN states that these sheets are being filed to update GTN's reporting of negotiated rate transactions that it has entered into.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3885 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–110]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

July 14, 2005.

Take notice that on July 6, 2005, Natural Gas Pipeline Company of America (Natural) submitted a compliance filing pursuant to the Federal Energy Regulatory Commission (Commission) Order on Clarification and Rehearing issued June 8, 2005, in Docket No. RP99–176–109 (Order).

Natural states that copies of its filing were served on all parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3881 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–404–017]

Northern Natural Gas Company; Notice of Filing of a Report on Field Area Segmentation

July 14, 2005.

Take notice that on July 1, 2005, Northern Natural Gas Company (Northern), filed a report with the Commission in compliance with the Commission's August 4, 2004 Order in this proceeding, which assesses the operation of Phase 1 of Northern's Field Area segmentation plan.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ≥eLibrary≥ link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3883 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–386–001]

Overthrust Pipeline Company; Notice of Compliance Filing

July 15, 2005.

Take notice that on July 13, 2005, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Substitute Third Revised Sheet No. 109, to become effective July 22, 2005.

Overthrust states that copies of the filing have been served upon

Overthrust's customers and the public service commissions of Utah and Wyoming.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3891 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–405–001]

Ozark Gas Transmission, L.L.C.; Notice of Compliance Filing

July 15, 2005.

Take notice that on July 7, 2005, Ozark Gas Transmission, L.L.C. (Ozark) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 110, with an effective date of September 1, 2005.

Ozark states that on June 29, 2005 it filed certain proposed amendments to its FERC Gas Tariff to comply with FERC Order No. 587–S. Ozark states that it has discovered that one of the new tariff sheets it included as part of that filing, designated as an ''Original Sheet'', had previously been used (but did not become effective) as part of a 1998 certificate proceeding.

Ozark states that copies of the filing has been served on all of Ozark's affected customers and state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502-8659.

Linda Mitry,

Deputy Secretary.

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[FR Doc. E5–3892 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1010–002, ER05–1213–000]

PJM Interconnection, L.L.C.; Notice of Filing

July 15, 2005.

Take notice that on July 8, 2005, PJM Interconnection L.L.C. (PJM) submitted for filing a revised Interconnection Service Agreement (ISA) in which the return component of the costs was deleted, in compliance with the Commission's order issued June 23, 2005, in Docket No. ER05–1010–000. PJM also submitted for filing under section 205 of the Federal Power Act a new Schedule G—Schedule of Non-Standard Terms and Conditions—to the ISA, in which Technical Specifications dealing with telephonic interference, are specified.

Any person desiring to intervene or to protest in the above proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. on July 29, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3889 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–982–000, ER05–982–001]

Prime Power Sales I, LLC; Notice of Issuance of Order

July 15, 2005.

Prime Power Sales I, LLC (PPSI) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for wholesale sales of energy and capacity at market-based rates. PPSI also requested waiver of various Commission regulations. In particular, PPSI requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by PPSI.

On July 14, 2005, the Commission granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by PPSI should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest, is August 15, 2005.

Absent a request to be heard in opposition by the deadline above, PPSI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of PPSI, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of PPSI issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3890 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–508–000]

Questar Pipeline Company; Notice of Tariff Filing

July 15, 2005.

Take notice that on July 13, 2005, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 3, Forty-First Revised Sheet No. 8, to be effective August 15, 2005.

Questar states that this filing proposed the deletion of the reference to a Gas Research Institute (GRI) surcharge that is no longer applicable. Questar further states that the GRI funding has been eliminated according to a Commission-approved 1998 settlement.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3895 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–393–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

July 14, 2005.

Take notice that on July 8, 2005, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP05–393–000 a request pursuant to sections 157.205(b) and 157.208(f)(2) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.208) for authorization to increase the maximum allowable operating pressure (MAOP) of its North Odem-Spartan lateral (Line 3A–100) located in San Patricio County, Texas, under the authorization issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully described in the request.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this request may be directed to Jacques A. Hodges, Attorney, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, at (713) 420—5680 or Fax (713) 420–1601 or Cynthia Hornstein Roney, Certificates & Regulatory Compliance, at (713) 420–3281 or fax (713) 420–1605.

Tennessee states that Line 3A–100 is connected to Tennessee's parallel mainlines designated as Line No. 100–1 and 100–2. Tennessee asserts that the operating pressure of its mainline is 750 psig, but whenever the pressure on the mainline exceeds 700 psig, producers on the lateral must be shut in to avoid pressure buildup that exceeds the 718 psig MAOP limit. Tennessee maintains that the proposed MAOP increase is needed so that Tennessee can consistently and reliably receive natural gas from the affected producers located on this lateral. Tennessee contends that the estimated project cost would be approximately $41,110.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3877 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–363–001]

Texas Eastern Transmission, LP; Notice of Compliance Filing

July 15, 2005.

Take notice that on July 11, 2005, Texas Eastern Transmission, LP (Texas Eastern) submitted a compliance filing pursuant to *Texas Eastern Transmission, LP*, 111 FERC ¶ 62,329 (2005), issued on June 24, 2005, in Docket No. CP05–363–000.

Texas Eastern states that copies of the filing were served on parties on the official service lists in the captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 5, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3886 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–430–001]

Venice Gathering System, LLC; Notice of Compliance Filing

July 15, 2005.

Take notice that on July 8, 2005, Venice Gathering System, LLC (VGS) submitted for filing corrected tariff sheets to VGS's compliance filing in the instant docket. VGS states that the tendered tariff sheets, bearing a proposed effective date of September 1, 2005, are as follows:

Seventh Revised Sheet No. 192,
Seventh Revised Sheet No. 196,
Fifth Revised Sheet No. 197.

VGS states that the tariff sheets were filed to correct the Order No. 614 tariff sheet designations as required under the Commission's regulations.

VGS states that a copy of VGS's filing was served on each customer and interested state commission.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3893 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC05–102–000, et al.]

Wrightsville Power Facility, L.L.C., et al.; Electric Rate and Corporate Filings

July 14, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wrightsville Power Facility, L.L.C.; Wrightsville Development Funding, L.L.C.; Mirant Wrightsville Management, Inc.; Mirant Wrightsville Investment, Inc.

[Docket No. EC05–102–000]

Take notice that on July 8, 2005, Wrightsville Power Facility, L.L.C. and two of its members, Mirant Wrightsville Management, Inc. and Mirant Wrightsville Investment, Inc., and Wrightsville Development Funding, L.L.C. (collectively, the Applicants), as debtors and debtors in possession, submitted an Application pursuant to section 203 of the Federal Power Act for authorization of the disposition of jurisdictional facilities whereby the Applicants will sell certain FPA-jurisdictional facilities associated with the approximately 548 MW Wrightsville generating facility, to Arkansas Electric Cooperative Corporation for consideration in the amount of $85,000,000.00.

Comment Date: 5 p.m. eastern time on July 29, 2005.

2. FPL Energy Montezuma Wind, LLC

[Docket No. EG05–81–000]

Take notice that on July 6, 2005, FPL Energy Montezuma Wind, LLC, (FPL Energy) located at 700 Universe Blvd., Juno Beach, Florida, 33408, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

FPL Energy Montezuma Wind, LLC states it is a wind facility with a nameplate generating capacity of approximately 34.2 MW located in Solano County, California.

FPL Energy states that copies of this filing have been served upon the Securities and Exchange Commission, the Florida Public Service Commission and the California Public Utilities Commission.

Comment Date: 5 p.m. eastern time on July 28, 2005.

3. Shiloh I Wind Project LLC

[Docket No. EG05–82–000]

Take notice that on July 8, 2005, Shiloh I Wind Project LLC (Shiloh), 1125 NW. Couch, Suite 700, Portland, Oregon 97209, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: 5 p.m. eastern time on July 29, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3897 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 15, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–1011–006.
Applicants: Redbud Energy LP.
Description: Redbud Energy LP submits Second Revised Sheet 1 and First Revised Sheets No. 1 A to its FERC Electric Tariff, Original Volume No.1, in compliance with the Commission's 6/16/05 letter order, 111 FERC 61,397 (2005).
Filed Date: 7/12/2005.
Accession Number: 20050714–0185.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 2, 2005.

Docket Numbers: ER05–903–001.
Applicants: Consolidated Edison Energy Massachusetts, Inc.
Description: Consolidated Edison Energy Massachusetts, Inc. submits an amendment to its 4/29/05 filing of a cost-of-service Reliability Must Run Agreement with ISO New England, Inc., in response to the Commission's 6/10/05 deficiency letter in Docket No. ER05–903–000.
Filed Date: 7/11/2005
Accession Number: 20050714–0059.
Comment Date: 5 p.m. Eastern Time on Monday, August 1, 2005.

Docket Numbers: ER05–1206–000.
Applicants: Alliance Power Marketing, Inc.
Description: Alliance Power Marketing, Inc. submits a notice of cancellation of its market rate tariff, FERC Electric Rate Schedule No. 1.
Filed Date: 7/7/2005.
Accession Number: 20050711–0166.
Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER05–1208–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an executed service agreement for network integration transmission service and an executed network operating agreement with Southwestern Public Service Company to serve West Texas Municipal Power

Agency load located at the City of Lubbock, Texas, designated as Service Agreement No. 1139.

Filed Date: 7/12/2005.

Accession Number: 20050714–0190.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 2, 2005.

Docket Numbers: ER05–1209–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection LLC submits revisions to its open access transmission tariff concerning its proposal to amend Article 10 of the PJM Open Access Transmission Tariff .

Filed Date: 7/12/2005.

Accession Number: 20050714–0189.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 2, 2005.

Docket Numbers: ER98–4289–005.

Applicants: Montana-Dakota Utilities Company.

Description: Montana-Dakota Utilities Company submits an amendment to its updated market power analysis filed 10/15/04, as amended on 5/6/05, in response to the Commission's deficiency letter issued 6/3/05.

Filed Date: 7/5/2005.

Accession Number: 20050714–0056.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 26, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlinSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3898 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 14, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–2187–001.

Applicants: CMS Distributed Power, L.L.C.

Description: CMS Distributed Power, L.L.C.'s response to the requirement to file a generation market power analysis together with tariff modification to comply with FERC's rulings and related materials.

Filed Date: 7/11/2005.

Accession Number: 20050713–0073.

Comment Date: 5 p.m. Eastern Time on Monday, August 1, 2005.

Docket Numbers: ER00–2687–007.

Applicants: Union Electric Company.

Description: Union Electric Company submits notification of change in status regarding AmerenUE relevant to its continued authorization to sell power at market-based rates.

Filed Date: 7/11/2005.

Accession Number: 20050713–0070.

Comment Date: 5 p.m. Eastern Time on Monday, August 1, 2005.

Docket Numbers: ER01–205–008; ER98–2640–006; ER98–4590–004; ER99–1610–011.

Applicants: Xcel Energy Services, Inc.; Northern States Power Company and Northern States Power Company (Wisconsin); Public Service Company of Colorado; Southwestern Public Service Company.

Description: Xcel Energy Services Inc, on behalf of itself and the Xcel Energy Operating Companies, Northern States Power Company and Northern States Power Company (Wisconsin), Public Service Company of Colorado and Southwestern Public Service Company, submits an errata to correct the description of the change in status submitted 7/1/05.

Filed Date: 7/12/2005.

Accession Number: 20050714–0154.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 2, 2005.

Docket Numbers: ER04–230–011; ER01–3155–009; EL01–45–017; ER01–1385–018.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits its compliance filing which modifies Attachment H of its Market Administration & Control Area Services Tariff, to remove the tariff provisions that permit the application of the NYISO's automatic mitigation procedures to generator's operating in the rest-of-state, real-time market pursuant to the Commission's Order issued 6/24/05, 111 FERC 61,468 (2005).

Filed Date: 7/11/2005.

Accession Number: 20050713–0069.

Comment Date: 5 p.m. Eastern Time on Monday, August 1, 2005.

Docket Numbers: ER04–1265–003.

Applicants: Mystic I, LLC; Mystic Development, LLC; Fore River Development, LLC.

Description: Mystic I, LLC, Mystic Development, LLC & Fore River Development, LLC, submit their revised versions of the market-based tariffs with the correct designations in compliance with the Commission's 6/7/05 letter order.

Filed Date: 7/7/2005.

Accession Number: 20050713–0071.

Comment Date: 5 p.m. Eastern Time on Thursday, July 28, 2005.

Docket Numbers: ER05–940–000.

Applicants: Vesta Capital Partners LP.

Description: Vesta Capital Partners, LP submits a Notice of Withdrawal of its proposed Initial Rate Schedule, FERC Electric Tariff, Original Volume 1 filed on 5/5/05.

Filed Date: 7/5/2005.

Accession Number: 20050708–0037.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 26, 2005.

Docket Numbers: ER05–1179–001.

Applicants: Berkshire Power Company, LLC.

Description: Berkshire Power Company, LLC submits Exhibit FMB–2, which provides detailed cost & revenue information for Berkshire for the calendar year 2000 through 2004, amending its 6/30/05 filing in ER05–1179–000.

Filed Date: 7/8/2005.

Accession Number: 20050712–0210.

Comment Date: 5 p.m. Eastern Time on Thursday, July 21, 2005.

Docket Numbers: ER05–1207–000.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Company submits changes in rates applicable to transmission service to be provided to Arkansas Electric Cooperative Corporation for the period 7/1/05 to 12/21/07.

Filed Date: 7/11/2005.

Accession Number: 20050713–0074.

Comment Date: 5 p.m. Eastern Time on Monday, August 1, 2005.

Docket Numbers: ER97–2801–008, ER03–478–006 and EL05–95–000.

Applicants: PacifiCorp.

Description: PacifiCorp and PPM Energy, Inc., provides their second and final filing in compliance with FERC's 5/9/05 order.

Filed Date: 7/8/2005, as amended 7/12/2005.

Accession Number: 20050712–0286.

Comment Date: 5 p.m. Eastern Time on Friday, July 29, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3899 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

July 14, 2005.

a. *Type of Filing:* Notice of intent to file application for a new license.

b. *Project No.:* 606.

c. *Date Filed:* June 27, 2005.

d. *Submitted by:* Synergics Energy Services, LLC.

e. *Name of Project:* Kilarc-Cow Creek Project.

f. *Location:* On Old Cow Creek and South Cow Creek in Shasta County, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act; 18 CFR 16.6 of the Commission's regulations. Pursuant to 18 CFR 16.25, the Commission solicited applications from potential applicants for the Kilarc-Cow Creek project when the current licensee, Pacific Gas & Electric Co., did not file a new license application for the project by the March 27, 2005 deadline. Potential applicants had 90 days (ending July 5, 2005) to file a Notice of Intent to file an application for a new license for P–606.

h. *Expiration Date of Current License:* March 27, 2007.

i. The project consists of two separate operating projects. The first, the Kilarc facility, consists of: (1) North Canyon Creek diversion and canal; (2) South Canyon Creek diversion dam and canal; (3) Canyon Creek siphon; (4) Kilarc diversion dam main canal; (5) Kilarc forebay dam; (6) Kilarc forebay, penstock, and powerhouse. The second, the Cow Creek facility, consists of: (1) Mill Creek diversion dam and Mill Creek-South Cow Creek canal; (2) South Cow Creek diversion dam and main canal; (3) Cow Creek forebay dam; (4) Cow Creek forebay, penstock, and powerhouse.

j. *Pursuant to 18 CFR 16.7, Information on the Project is Available at:* Whitmore Public Library, 30611 Whitmore Road, Whitmore, CA, 96096.

k. *FERC Contact:* Emily Carter, 202–502–6512, *emily.carter@ferc.gov*.

l. *Licensee Contact:* Arthur Hagood, Synergics Energy Services, LLC, 191 Main Street, Annapolis, Maryland, 21401.

m. The applicant states its unequivocal intent to submit an application for a new license for Project No. 606. Pursuant to Part I of the Federal Power Act and Part 4 (except section 4.38) of the Commission's regulations, the application for license for this project must be filed with the Commission within 18 months of the date on which the applicant files its notice and must comply with the requirements of 18 CFR 16.8 and 16.10 of the Commissions Regulations. The applicant filed their Notice of Intent to file an application for new license for P–606 on June 27, 2005 and the application for license for this project must be filed by December 27, 2006.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY 202–502–8659. A copy is also available for inspection and reproduction at the address in item k above.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

p. By this notice, the Commission is seeking corrections and updates to the attached mailing list for the Kilarc-Cow Creek Project. Updates should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3879 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Soliciting Scoping Comments

July 14, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* P–7758–004.

c. *Date Filed:* February 5, 2005.

d. *Applicant:* Holyoke Gas & Electric Department.

e. *Name of Project:* Holyoke No. 4 Hydroelectric Project.

f. *Location:* On the Holyoke Canal System on the Connecticut River in Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Paul Ducheney, Superintendent-Hydro, Holyoke Gas & Electric Department, One Canal Street, Holyoke, MA 01040, (413) 536–9340 or *ducheney@hged.com.*

i. *FERC Contact:* Jack Hannula, (202) 502–8917, *john.hannula@ferc.gov.*

j. *Deadline for Filing Scoping Comments:* August 19, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The project is located on the Holyoke Canal System on the Connecticut River in Hampden County, Massachusetts.[1] The Holyoke Canal System consists of three levels, and the project facilities are located between the first and second canal level. The project is one of nine FERC-licensed projects on the Holyoke Canal System. The Holyoke No. 4 Hydro Project has an installed generating capacity of 750 kilowatts (kW), and generates about 3,148,000 kilowatt-hours (kWh) of energy annually. Flows into the Canal System are regulated by HG&E through operation of the Holyoke Project No. 2004 according to the Comprehensive Canal Operations Plan (CCOP) and the Comprehensive Operations and Flow Plan (COFP).[2] The project does not occupy any Federal lands.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov.esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:*

The Commission staff intends to prepare an Environmental Assessment (EA) for the Holyoke No. 4 Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we will solicit comments, recommendations, information, and alternatives in the Scoping Document (SD).

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3880 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

[1] The Holyoke Canal System is licensed under the Holyoke Project No. 2004. 88 FERC ¶ 61,186 (1999).

[2] The CCOP and COEP are part of a Settlement Agreement (filed with the Commission on March 12, 2004) as part of the licensing of the Holyoke Project No. 2004. These plans address canal flows, water quality, fish, and other habitat species.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–360–000]

Creole Trail LNG Terminal, L.P.; Notice of Technical Conference

July 14, 2005.

On Wednesday, August 10, 2005, at 8:30 a.m. (CDT), staff of the Office of Energy Projects will convene a cryogenic design and technical conference regarding the proposed Creole Trail LNG import terminal. The cryogenic conference will be held in the Holiday Inn Express Hotel & Suites in Sulphur, Louisiana. The hotel is located at 102 Mallard St, Sulphur, Louisiana 70665. For hotel details call 337–625–2500.

In view of the nature of critical energy infrastructure information and security issues to be explored, the cryogenic conference will not be open to the public. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested Federal, state, and local agencies. Any person planning to attend the August 10th cryogenic conference *must register* by close of business on Friday, August 5, 2005. Registrations may be submitted either online at *https://www.ferc.gov/whats-new/registration/cryo-conf-form.asp* or by faxing a copy of the form (found at the referenced online link) to 202–208–0353. All attendees must sign a non-disclosure statement prior to entering the conference. For additional information regarding the cryogenic conference, please contact Kareem M. Monib at 202–502–6265.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3876 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

July 14, 2005.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: July 21, 2005; 10 a.m.

Place: Room 2C, 888 First Street, NE., Washington DC 20426.

Status: Open.

Matters to be Considered: Agenda.

*Note—Items listed on the agenda may be deleted without further notice.

Contact person for more information: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

For a recorded listing item stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

895th—Meeting

Regular Meeting

July 21, 2005, 10 a.m.

Item No.	Docket No.	Company
	Administrative Agenda	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD05–12–000	Investigation of Supply Offers into MISO April–May 2005.
	Markets, Tariffs, and Rates—Electric	
E–1	OMITTED.	
E–2	OMITTED.	
E–3	ER05–666–000, ER05–666–001, ER05–666–002.	Southwest Power Pool, Inc.
E–4	ER05–990–000, ER05–990–001	Southwest Power Pool.
E–5	ER05–1029–000	Midwest Independent Transmission System Operator, Inc.
E–6	ER05–1051–000, ER05–1052–000	Southwest Power Pool, Inc.
E–7	ER05–1050–000	AmerGen Energy Company, LLC.
E–8	OMITTED.	
E–9	OMITTED.	
E–10	OMITTED.	
E–11	OMITTED.	
E–12	OMITTED.	
E–13	ER05–6–023, ER05–6–028, ER05–6–030	Midwest Independent Transmission System Operator, Inc.
	EL04–135–025, EL04–135–030, EL04–135–032, EL02–111–043, EL02–111–048, EL02–111–050.	Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.
	EL03–212–039, EL03–212–044, EL03–212–046.	Ameren Services Company.
E–14	OMITTED.	
E–15	OMITTED.	
E–16	ER04–691–038, ER04–691–043, ER04–691–048.	Midwest Independent Transmission System Operator, Inc.
	EL04–104–036, EL04–104–041, EL04–104–046.	Public Utilities with Grandfathered Agreements in the Midwest ISO Region.
E–17	ER03–811–003	Entergy Services, Inc.
E–18	ER97–3923–002	Infinite Energy, Inc.
E–19	ER03–1331–003, ER03–1331–004	Williams Power Company, Inc.
	ER99–1722–004, ER99–1722–005	Williams Energy Marketing & Trading Company.
	ER97–4587–004, ER97–4587–005, ER97–4587–006.	Williams Generation Company—Hazelton.
	ER00–2469–001, ER00–2469–002, ER00–2469–003.	Williams Flexible Generation, LLC.
E–20	ER99–3125–001	Minergy Neenah, L.L.C.
E–21	OMITTED.	
E–22	OMITTED.	
E–23	OMITTED.	
E–24	EL01–106–000	Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C.
E–25	EL05–117–000	Old Dominion Electric Cooperative v. Potomac Edison Company d/b/a Allegheny Power.
E–26	EL05–119–000	Devon Power LLC v. ISO New England Inc.
E–27	OMITTED.	
E–28	EL05–53–000, ER05–129–000	Southern Company Services, Inc.
E–29	EL03–37–001	Town of Norwood, Massachusetts v. National Grid USA, New England Electric System, Massachusetts Electric Company and Narragansett Electric Light Company.
E–30	ER05–191–000, ER05–191–001	Perryville Energy Partners, L.L.C.
E–31	EL05–18–000, ER05–381–000	City of Pasadena, California and California Independent System Operator Corporation.
E–32	ER98–4410–000, ER98–4410–001, ER98–4410–002.	Entergy Services, Inc.
E–33	ER02–1741–000, ER02–1742–000	Nevada Power Company.
	ER04–424–002	Valley Electric Association, Inc.
	ER02–2344–001	Southern California Edison Company.

Item No.	Docket No.	Company
E–34	OMITTED.	
E–35	PA03–12–002	Transmission Congestion on the Delmarva Peninsula.
E–36	OMITTED.	
E–37	ER05–413–001, ER05–413–002	Southern Company Services, Inc.
E–38	ER05–31–002, ER05–31–003	American Electric Power Service Corporation.
	EL05–70–001, EL05–70–002, EL05–70–003.	PJM Interconnection, LLC and Midwest Independent Transmission System Operator, Inc.
E–39	OMITTED.	
E–40	OMITTED.	
E–41	EL05–38–001, EL05–38–002	Oklahoma Municipal Power Authority v. American Electric Power Service Corporation.
	EL05–126–000	American Electric Power Service Corporation.
E–42	OMITTED.	
E–43	OMITTED.	
E–44	EL05–46–001	Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 2, LLC and Entergy Nuclear Indian Point 3, LLC v. Consolidated Edison Company of New York, Inc.
E–45	OMITTED.	
E–46	ER04–938–001, ER04–938–002	California Independent System Operator Corporation.
E–47	EL05–55–001	City of Holland, Michigan v. Midwest Independent Transmission System Operator, Inc.
E–48	OMITTED.	
E–49	ER04–663–000	Entergy Services, Inc.
E–50	ER05–10–000, ER05–10–003	PJM Interconnection L.L.C.
E–51	TX05–1–000, TX05–1–001, TX05–1–002	East Kentucky Power Cooperative, Inc.
E–52	ER05–985–000	Trans Bay Cable LLC.
Markets, Tariffs, and Rates—Gas		
G–1	RP05–388–000	CenterPoint Energy—Mississippi River Transmission Corporation.
G–2	PR05–11–000	The Cincinnati Gas & Electric Company.
G–3	RP05–172–001	CenterPoint Energy—Mississippi River Transmission Corporation.
G–4	OMITTED.	
G–5	RP05–51–001	Dominion Transmission, Inc.
G–6	RP05–254–000	Kern River Gas Transmission Company.
G–7	RP04–94–000, RP04–94–001	Northern Natural Gas Company.
G–8	RP05–216–001	TransColorado Gas Transmission Company.
G–9	RP05–290–001	Midwestern Gas Transmission Company.
G–10	OMITTED.	
G–11	RP01–245–015	Transcontinental Gas Pipe Line Corporation.
G–12	OMITTED.	
G–13	OMITTED.	
Energy Projects—Hydro		
H–1	DI04–3–001	Chippewa and Flambeau Improvement Company.
H–2	P–2368–040	WPS New England, Inc.
H–3	P–12430–001, P–12462–002	Indian River Power Supply, LLC Alternative Light & Hydro Associates.
H–4	P–12178–002	Verdant Power, LLC.
H–5	HB20–95–2–011	City of Hamilton, Ohio.
H–6	OMITTED.	
H–7	P–2493–029, P–2493–025	Puget Sound Energy, Inc.
Energy Projects—Certificates		
C–1	CP05–40–000, CP05–41–000	Rendezvous Gas Services, L.L.C.
C–2	RP04–215–001	Tennessee Gas Pipeline Company v. Columbia Gulf Transmission Company.
C–3	CP05–386–000	Port Barre Gas Storage and Rapiere Resources Company.
C–4	OMITTED.	
C–5	CP05–58–000	CenterPoint Energy Gas Transmission Company.
C–6	CP05–8–000, CP05–9–000, CP05–10–000	Starks Gas Storage L.L.C.
C–7	OMITTED.	
C–8	CP05–13–000	Ingleside Energy Center LLC.
	CP05–11–000, CP05–12–000, CP05–14–000.	San Patricio Pipeline, LLC.
C–9	CP04–366–002	Gulf South Pipeline Company, LP.

Magalie R. Salas,
Secretary.

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu and click on ''FERC''.*

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 05–14529 Filed 7–19–05; 1:42 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

July 14, 2005.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date received	Presenter or requester
Prohibited:		
1. CP04–36–000, CP04–41–000	6–24–05	Michael L. Miozza.
2. CP04–374–000	7–8–05	Maurice Coman.
3. CP04–374–000	7–8–05	Jeffrey R. Dute.
4. CP04–374–000	7–8–05	Chris Dorsett.
5. EC05–43–000	6–28–05	Edward Dickert. [1]
6. EC05–43–000	7–8–05	Lucy Fuches, *et al.*[2]
Exempt:		
1. CP04–36–000, CP04–41–000	6–28–05	Hon. Edward M. Lambert, Jr.
2. CP04–374–000	7–8–05	Hon. Kathleen Babineaux Blanco.
3. CP04–374–000	7–8–05	Gerald M. Duszynski.
4. CP04–374–000	7–8–05	Paul Joe.
5. CP04–374–000	7–8–05	Teri F. Lanoue.
6. CP04–374–000	7–8–05	Dwight Landreneau.
7. CP04–374–000	7–8–05	Lisa L. Miller.
8. CP04–374–000	7–8–05	David C. Schanbacher, P.E.
9. CP04–374–000	7–8–05	William A. Sussmann.
10. CP04–386–000, CP04–400–000	6–27–05	Hon. Rick Perry.
11. CP05–372–000	7–6–05	Ronnie Briley.
12. Project No. 2586–023	6–30–05	Mike Noel. [3]
13. PF05–2–000, CP05–372–000	6–30–05	Sue Carr.
14. PF05–2–000, CP05–372–000	6–30–05	Lorrie Marcum.
15. Project No. 2071–000, Project No. 935–000, Project No. 2111–000	6–29–05	Jon Cofrancesco.
16. Project No. 2071–000, Project No. 935–000, Project No. 2111–000	6–29–05	Frank Shrier.
17. Project No. 2071–000, Project No. 935–000, Project No. 2111–000	6–29–05	Mark Kilgore.
18. Project No. 2213–000	6–29–05	Jon Cofrancesco.

[1] One of fourteen similar documents in a memorandum format, filed between 6–28–05 and 7–8–05.

[2] Record of phone calls (comments) received in Chairman Pat Wood's office in June 2005. All, with the exception of one, from Mr. Whitney Rosburn, address the PSEG/Excelon merger and are prohibited communications.

[3] One of two e-mail correspondences from Mike Noel (dated 5–27–05 and 6–21–05). Both with a 6–30–05 filing date.

Linda L. Mitry,

Deputy Secretary.

[FR Doc. E5–3882 Filed 7–20–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2004–0023; FRL–7941–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Health Effects of Microbial Pathogens in Recreational Waters; National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study (Renewal), EPA ICR Number 2081.02, OMB Control Number 2080–0068

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 22, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2004–0023 to (1) EPA online using EDOCKET (our preferred method), by e-mail to *ord.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Research and Development Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sams, National Health and Environmental Effects Research Laboratory, Environmental Protection Agency, MD 58–C, Research Triangle Park, NC 27711; telephone number: (919) 843–3161; fax number: (919) 966–0655; e-mail address: *sams.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 14, 2005 (70 FR 7496), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. ORD–2004–0023, which is available for public viewing at the Office of Research and Development Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Research and Development Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Health Effects of Microbial Pathogens in Recreational Waters; National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study (Renewal).

Abstract: This study will be conducted, and the information collected, by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency (EPA). Participation of adults and children in this collection of information is strictly voluntary.

Households (families/individuals) at selected beaches will be interviewed on the beach about a variety of exposures including those to recreational water. Ten to twelve days later, families/individuals will be contacted by telephone and interviewed on the occurrence of selected symptomatolgy since swimming at the beach. In addition, selected groups of children (boy and girl scouts, church groups, camps) who are making day trips to selected beaches for recreation will be asked to participate in a special study to identify specific microbial pathogens.

This information is being collected as part of a research program consistent with the Section 3(a) (v) (1) of the Beaches Environmental Assessment and Coastal Health Act of 2000 and the strategic plan for EPA's Office of Research and Development (ORD) and the Office of Water entitled ''Action Plan for Beaches and Recreational Water.'' The Beaches Act and ORD's strategic plan have identified research on effects of microbial pathogens in recreational waters as a high-priority research area with particular emphasis on developing new water quality indicator guidelines for recreational waters. EPA has broad legislative authority to establish water quality criteria and to conduct research to support these criteria. This data collection is for a series of epidemiological studies to evaluate exposure to and effects of microbial pathogens in marine and fresh (Great Lakes) recreational waters as part of EPA's research program on exposure and health effects of microbial pathogens in recreational waters. The results of these health effects studies will be used to document human health effects associated with recreational water use and correlate these health effects with ongoing EPA studies to identify a new generation of indicators for detection of human pathogens in recreational water and appropriate, effective, and expeditious testing methods for these indicators (addressed separately under Section 3(a) (v) (2) and (3) of the Beaches Environmental Assessment and Coastal Health Act of

2000). The results will be used to develop mathematical relationships that will be used for the generation of new national water quality guidelines and appropriate monitoring guidelines.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 23 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are families frequenting fresh and marine water beaches in the continental United States.

Estimated Number of Respondents: 7,000.

Frequency of Response: 2 times.

Estimated Total Annual Hour Burden: 5,250 hours.

Estimated Total Annual Cost: $77,000, includes $0 annualized capital or O&M costs and $77,000 annual labor costs.

Changes in the Estimates: There is a increase of 2,500 respondents in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Due to increased pressure to expeditiously complete the study, the study team may complete more than one beach per year, thus increasing the number of participants enrolled in the study annually. This renewal ICR 2081.02 reflects the estimated respondent and agency burden for two beaches per year, whereas the estimates in the previous ICR (EPA ICR Number 2081.01) account for only one beach annually. Although there is a significant increase in the number of respondents, there is only an increase of 250 burden hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to the fact that the original ICR (EPA ICR Number 2081.01) included a second telephone survey that has been eliminated in this renewal ICR and consequently has reduced the total hours for each respondent.

Dated: July 14, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–14400 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0038; FRL–7941–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Oil and Natural Gas Production, EPA ICR Number 1788.06, OMB Control Number 2060–0417

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 22, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0038, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7054; fax number: (202) 564–0050; e-mail address: *chadwick.dan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 1, 2004 (69 FR 69909), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0038, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in

EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Oil and Natural Gas Production.

Abstract: This information collection request addresses Clean Air Act information collection requirements in standards published at 40 CFR part 63, subpart HH, which have mandatory recordkeeping and reporting requirements. These regulations were proposed on February 6, 1998, promulgated on June 17, 1999, and apply to major sources of hazardous air pollutants (HAP) and that process, upgrade, or store (1) hydrocarbon liquids (with the exception of those facilities that exclusively handle black oil) to the point of custody transfer and (2) natural gas from the well up to and including the natural gas processing plant. Specifically exempted from this regulation are oil and natural gas production wells. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these records, and retain the file for at least 5 years following the date of such occurrences, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 187 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those that process, upgrade, or store (1) hydrocarbon liquids to the point of custody transfer and (2) natural gas from the well up to and including the natural gas processing plant.

Estimated Number of Respondents: 127,202.

Frequency of Response: On occasion, semi-annually.

Estimated Total Annual Hour Burden: 175,907 hours.

Estimated Total Capital and Operations & Maintenance (O&M) Annual Costs: $495,720 which includes $20,400 annualized capital/startup costs and $475,320 annual O&M costs.

Changes in the Estimates: There is an increase of 146,418 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This change is primarily due to the consideration of the recordkeeping burden on respondents required to keep records of their determination of applicability, but that are not subject to the emission control requirements of the NESHAP.

Dated: July 12, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–14401 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0078, FRL–7941–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; National Survey on Environmental Management of Asthma, EPA ICR Number 1996.03, OMB Control Number 2060–0490

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 22, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2005–0078, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket (6102T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Conrath, Indoor Environments Division, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9389; fax number: (202) 343–2393; e-mail address: *conrath.susan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 28th, 2005, (70 FR 9639), EPA sought comments on this ICR pursuant to 5CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OAR–2005–0078, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742, fax: (202) 566–1741. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: National Survey on Environmental Management of Asthma.

Abstract: Executive Order 13045, issued in 1997, directed each federal agency to identify, assess, and address environmental health and safety risks for children. This executive order also created the Task Force on Environmental Health Risks and Safety Risks in Children, co-chaired by the Secretary of Health and Human Services (HHS) and the Administrator of the Environmental Protection Agency (EPA). In April 1998, this Task Force identified four priority areas, one of which was childhood asthma. In response, EPA launched efforts to better understand the role that environmental factors, including airborne allergens and irritants, play in the onset of asthma and the triggering of asthma symptoms. Indoor allergens include those from house dust mites, cockroaches, mold, and animal dander. In addition, exposure to environmental tobacco smoke (ETS) has also been shown to be a major determinant of asthma symptoms.

EPA is working to integrate the management of environmental factors with the medical treatment of asthma, particularly among children and low-income populations. To evaluate the effectiveness of its current outreach efforts, EPA proposes to collect data from individual U.S. households through a telephone survey. This survey will be used to gain information regarding the number of individuals with asthma who have taken steps to improve the quality of their indoor environment as part of their approach to managing the disease, as well as any barriers they may have encountered while attempting to do so. EPA will compare the data gained from this survey to a similar survey completed in 2003. These data will help the Agency determine if it has reached its 2005 goal, established by the Government Performance and Results Act of 1993 (GPRA), and is on track for the 2012 goal. Specifically, EPA's goal is that 2.5 million people with asthma, including one million children and 200,000 low-income adults, will have taken steps to reduce their exposure to indoor environmental asthma triggers by 2005. EPA's 2012 goal is that 6.5 million people with asthma, including 2.9 million children, will have taken steps to reduce their exposure to indoor environmental triggers.

EPA intends to conduct the survey once during the period for which this ICR is in effect. EPA will conduct the survey in two phases. The first phase is intended to identify households where either an adult asthmatic or child with asthma resides. Individuals who participate in the first phase of EPA's survey will be chosen at random from U.S. households with publicly listed telephone numbers. EPA expects that 15 percent of individuals who participate in its screening survey will have asthma or live in a household with someone who does. After responding to several screening questions, adult asthmatics and parents of children with asthma will be invited to participate in a longer, more in-depth telephone survey. EPA intends to over-sample in communities known to have a high percentage of low-income households to ensure that the Agency is able to evaluate the effectiveness of its outreach efforts to this target population. The National Survey on Environmental Management of Asthma is voluntary. EPA does not expect to receive confidential information from the individuals who voluntarily participate in the survey. However, if a respondent does consider the information submitted to be of a proprietary nature, EPA will assure its confidentiality based on the provisions of 40 CFR part 2, subpart B, ''Confidentiality of Business Information.''

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 02/28/05 (70 FR 9639–9640); three comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average between 3.5 minutes and 13.5 minutes per response, depending on whether or not the survey respondent has asthma or lives with someone who has asthma. This is a total estimated burden of 3,458 hours for completion of this survey. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected entities: Individuals throughout the United States with publicly listed residential telephone numbers.

Estimated Number of Respondents: 45,278.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 1,152 hours.

Estimated Total Annual Cost: $0.

Changes in the Estimates: There is an increase of 426 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burden. The increase in burden for this renewal ICR changed due to revisions in the survey instrument. In addition, by using data collected during the 2003 survey, estimated burden per respondent changed for this ICR renewal. Both of these changes increase the total estimated burden for this ICR renewal.

Dated: July 12, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–14402 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0009, FRL–7941–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Used Oil Management Standards Recordkeeping and Reporting Requirements, EPA ICR Number 1286.07, OMB Control Number 2050–0124

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request an existing approved collection. This ICR is scheduled to expire on December 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 19, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0009, to EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, mail code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael Svizzero, Office of Solid Waste, mailcode 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–0046; fax number: 703–308–8617; e-mail address: *svizzero.michael@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2005–0009, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket*.

Affected entities: Entities potentially affected by this action are Business or other for profit.

Title: Used Oil Management Standards Recordkeeping and Reporting Requirements.

Abstract: The Used Oil Management Standards, which include information collection requests, were developed in accordance with section 3014 of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), which directs EPA to ''promulgate regulations * * * as may be necessary to protect public health and the environment from the hazards associated with recycled oil'' and, at the same time, to not discourage used oil recycling. In 1985 and 1992, EPA established mandatory regulations that govern the management of used oil (see 40 CFR part 279). To document and ensure proper handling of used oil, these regulations establish notification, testing, tracking and recordkeeping requirements for used oil transporters, processors, re-refiners, marketers, and burners. They also set standards for the prevention and cleanup of releases to the environment during storage and transit, and for the safe closure of storage units and processing and re-refining facilities to mitigate future releases and damages. EPA believes these requirements minimize potential hazards to human health and the environment from the potential mismanagement of used oil by used oil handlers, while providing for the safe recycling of used oil. Information from these information collection requirements is used to ensure compliance with the Used Oil Management Standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range from 6 minutes to 23 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Estimated Number of Respondents: 1,640.

Frequency of Response: Biannually.

Estimated Total Annual Hour Burden: 460,286 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $10,011,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 14, 2005.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. 05–14403 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0011, FRL–7942–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements—EPA ICR Number 1745.05, OMB Control Number 2050–0154

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on November 30, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 19, 2005.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2005–0011, to EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode 5303T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (Mailcode 5306W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9037; fax number: (703) 308–8686; e-mail address: *dufficy.craig@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2005–0011, which is available for public viewing at the Office of Solid Waste and Emergency Response (OSWER) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: EPA assumes that industrial waste units that previously co-disposed non-hazardous wastes and conditionally exempt small quantity generator (CESQG) hazardous waste on-site have ceased that practice and that commercial off-site industrial waste units are operating with stringent environmental controls in place. Therefore, entities that potentially will be affected by this action are limited to those that dispose of CESQG hazardous wastes in construction and demolition (C&D) waste landfills.

Title: Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements—40 CFR part 257, subpart B, EPA ICR Number 1745.05, OMB Control Number 2050–0154.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 257—subpart B on a State level, owners/operators of construction and demolition waste landfills that receive CESQG hazardous wastes will have to comply with the final reporting and recordkeeping requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. This continuing ICR documents the recordkeeping and reporting burdens associated with the location and ground-water monitoring provisions contained in 40 CFR part 257—subpart B.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Burden for this collection of information is estimated to average 74 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Construction and demolition waste landfill owners/operators and State Agencies.

Estimated Number of Respondents: 183.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 13,581 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $938.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 1745.05 and OMB Control No. 2050–0154 in any correspondence.

Dated: July 5, 2005.

Matt Hale,

Director, Office of Solid Waste.

[FR Doc. 05–14404 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7941–8]

Regulatory Pilot Projects (Project XL); Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice; correction.

SUMMARY: The Environmental Protection Agency published a document in the **Federal Register** of June 8, 2005 concerning request for comments on Regulatory Pilot Projects. Within the document are several citations of an erroneous Agency form number.

FOR FURTHER INFORMATION CONTACT: Doug Heimlich, (202) 566–2234.

Correction

In the **Federal Register** of June 8, 2005, in 70 FR Doc. 05–11383, on page 33472, in the third column, replace all citations of ''EPA ICR No. 1755.06'' with the following:

EPA ICR No. 1755.07.

Dated: June 14, 2005.

Gerald J. Filbin,

Director, Innovative Pilots Division, Office of Policy, Economics and Innovation.

[FR Doc. 05–14398 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket Nos. V–2004–3, –4, IL226–1, FRL–7942–2]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for Midwest Generation Romeoville and Joliet Stations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders on petitions to object to two State operating permits.

SUMMARY: This document announces that the EPA Administrator has responded to two citizen petitions asking EPA to object to operating permits proposed by the Illinois Environmental Protection Agency (IEPA) to two facilities. Specifically, the Administrator has partially granted and partially denied each of the petitions submitted by the Chicago Legal Clinic on behalf of Citizens Against Ruining the Environment to object to the proposed operating permits for the Midwest Generation Romeoville and Joliet stations.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review in the United States Court of Appeals for the appropriate circuit of those portions of the petitions which EPA denied. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register,** pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA Region 5 Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final orders for the Midwest Generation Romeoville and Joliet stations are available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2004.htm.*

FOR FURTHER INFORMATION CONTACT: Pamela Blakley, Chief, Air Permitting Section, Air Programs Branch, Air and Radiation Division, EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886–4447.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of the EPA review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On January 26, 2004, the EPA received from the Chicago Legal Clinic petitions requesting that EPA object to the proposed title V operating permits for the Midwest Generation Romeoville and Joliet stations. The petitions raise issues regarding the permit application, the permit issuance process, and the permits themselves. Chicago Legal Clinic asserts that the permits: (1) Fail to comply with State and Federal requirements; (2) allow excess emissions during startup and malfunction, contrary to U.S. EPA policy; (3) contain conditions that are not practically enforceable; (4) allow the plant to continue to operate in a manner which causes severe health impacts on the surrounding communities; (5) contain numerous typographical errors, mistakes, and omissions; (6) are legally inadequate because they do not impose enforceable schedules to remedy non-compliance; and (7) fail to address mercury and other hazardous air pollutants.

On June 24, 2005, the Administrator issued orders partially granting and partially denying the petitions. The orders explain the reasons behind EPA's conclusion that the IEPA must reopen the permits to: (1) Address Petitioner's significant comments; (2) include periodic monitoring in compliance with 40 CFR 70.6(a)(3)(i)(B); (3) remove the note stating that compliance with the carbon monoxide limit is inherent; (4) explain in the statement of basis how it determined in advance that the permittee had met the requirements of the Illinois State Implementation Plan (SIP) or to specify in the permit that continued operation during malfunction or breakdown will be authorized on a case-by-case basis if the source meets the SIP criteria; (5) remove language which is not required by the underlying applicable requirement or explain in the permit or statement of basis how this language implements the underlying applicable requirement; (6) remove ''established startup procedures,'' include the startup procedures in the permit, or include minimum elements of the startup procedures that would ''affirmatively demonstrate that all reasonable efforts have been made to minimize startup emissions, duration of individual startups and frequency of startups;'' (7) require the owner or operator of the sources to report to the agency ''immediately'' or explain how the phrase ''as soon as possible'' meets the requirements of the SIP; (8) remove ''reasonably'' and ''reasonable'' from relevant permit terms or define or provide criteria to determine ''reasonably'' and ''reasonable'' that meet the requirements of the SIP; (9) remove the term ''reasonable'' from the relevant permit conditions in accordance with the language in part 70, section 504 of the Clean Air Act or section 39.5 of the Illinois Environmental Protection Act; (10) remove the ability to waive the testing requirements or explain how such a waiver would meet the requirements of part 70; (11) define ''extraordinary circumstances'' in a manner consistent with the requirements of the SIP or remove the language from the permit; (12) remove ''summary of compliance'' from the permit or clarify the term such that the reader understands what a ''summary of compliance'' must contain and how the summary relates to the control measures; (13) include appropriate prompt reporting requirements or explain how and where the permit meets the prompt reporting requirements of part 70; and (14) insert ''which'' after ''any new process emission unit'' to be consistent with the SIP. The orders also explain the reasons for denying Chicago Legal Clinic's remaining claims.

Dated: July 6, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 05–14405 Filed 7–20–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 5, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Richard Todd Profitt, Sevierville, Tennessee; to act as a substitute trustee and vote the shares of Tennessee State Bancshares, Inc., and thereby indirectly control Tennessee State Bank, both of Pigeon Forge, Tennessee.

Board of Governors of the Federal Reserve System, July 18, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–14458 Filed 7–20–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 2005.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Florence Bancorp, MHC Florence, Massachuetts; to become a bank holding company by acquiring 100 percent of the voting shares of Florence Savings Bank, Florence, Massachusetts.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bank of Choice Holding Company, Evans, Colorado; to acquire 100 percent of the voting shares of Colonial Bancorp, Aurora, Colorado, and thereby indirectly acquire voting shares of Colonial Bank, Aurora, Colorado.

Board of Governors of the Federal Reserve System, July 18, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–14443 Filed 7–20–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Governmentwide Relocation Advisory Board; Charter Renewal

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice of charter renewal.

SUMMARY: The Administrator of General Services has renewed the charter for the Governmentwide Relocation Advisory Board (Board) (see 69 FR 34676, June 22, 2004), extending it to December 31, 2005. The Board is used to obtain advice and recommendations on a wide range of relocation management issues. The Board's first priority is to review the current policies promulgated through the Federal Travel Regulation (FTR) for relocation allowances.

FOR FURTHER INFORMATION CONTACT: Patrick O'Grady, Room G–219, GSA Building, Washington, DC 20405, (202) 208–4493, or by email at patrick.ogrady@gsa.gov.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), and advises of the renewal of the GSA Governmentwide Relocation Advisory Board (Board). The Administrator of General Services has determined that the renewal of the Board is necessary and in the public interest.

ADDRESSES:You may request a copy of the charter by contacting Patrick O'Grady at *patrick.ogrady@gsa.gov*, by phone at (202)208–4493; or by FAX at (202)501–0349.

Dated: July 12, 2005

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. 05–14357 Filed 7–20–05; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Announcement of the Availability of the Expert Panel Report on Styrene; Request for Public Comment

AGENCY: National Institute for Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Announcement of report availability and request for comment.

SUMMARY: The CERHR announces the availability of the expert panel report on styrene on July 18, 2005 from the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in print from the CERHR (see **ADDRESSES** below). The expert panel report is an evaluation of the reproductive and developmental toxicity of styrene conducted by a 13-member expert panel composed of scientists from the federal government, universities, and private organizations. The CERHR invites the submission of public comments on this expert panel report (see **SUPPLEMENTARY INFORMATION** below). The CERHR previously solicited public comment on the draft version of this expert panel report (**Federal Register** Vol. 70, No. 45 pp. 11680–11681). Public deliberations by the panel took place on June 1–3, 2005, at the Holiday Inn Old Town Select Alexandria, Virginia to review and revise the draft expert panel report and reach conclusions regarding whether exposure to styrene is a hazard to human development or reproduction. The expert panel also identified data gaps and research needs.

DATES: The final expert panel report on styrene will be available for public comment on July 18, 2005. Written public comments on this report should be received by September 1, 2005.

ADDRESSES: Comments on the expert panel report and any other correspondence should be sent to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

The National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) convened an expert panel on June 1–3, 2005. The purpose of this meeting was to evaluate the scientific evidence regarding the potential reproductive and/or developmental toxicities associated with exposure to styrene. Styrene (ethenylbenzene; CAS RN: 100–42–5) is a high production volume chemical used in the production of polystyrene resins and as a co-polymer with acrylonitrile and 1,3-butadiene. Styrene is found in items such as foam cups, dental fillings, matrices for ion exchange filters, construction materials, and boats. It is also used in protective coatings, reinforced glass fiber, agricultural products, and as a food additive. The public can be exposed to styrene by ingesting food or drink that has been in contact with styrene polymers or through inhalation of polluted air and cigarette smoke. CERHR selected styrene for expert panel evaluation because of: (1) Public concern about styrene exposure and (2) recently available exposure studies.

Following receipt of public comments on the styrene final expert panel report, CERHR staff will prepare an NTP–CERHR monograph on this chemical. NTP–CERHR monographs are divided into four major sections: (1) The NTP Brief which provides the NTP's interpretation of the potential for the chemical to cause adverse reproductive and/or developmental effects in exposed humans, (2) a roster of expert panel members, (3) the final expert panel report, and (4) any public comments received on that report. The NTP Brief is based on the expert panel report, public comments on that report, and any new information that became available after the expert panel meeting.

Request for Comments

The CERHR invites written public comments on the styrene expert panel report. Written comments should be sent to Dr. Michael Shelby at the address provided above. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any). Any comments received will be posted on the CERHR Web site and be included in the NTP CERHR monograph on this chemical. All public comments will be considered by the NTP during preparation of the NTP Brief described above under ''Background.''

Background Information on the CERHR

The NTP established the NTP CERHR in June 1998 [**Federal Register**, December 14, 1998 (Vol. 63, No. 239, pp. 68782)]. The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

The CERHR invites the nomination of agents for review or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its Web site (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (see **ADDRESSES** above). The CERHR selects chemicals for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** notice July 16, 2001 (Vol. 66, No. 136, pp 37047–37048) and is available on the CERHR Web site under ''About CERHR'' or in printed copy from the CERHR.

Dated: July 6, 2005.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences and the National Toxicology Program.

[FR Doc. 05–14425 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–05CO]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The Centers for Disease Control and Prevention's Consumer Response Services Center (CDC–INFO) Evaluation—New—National Center for Health Marketing (NCHM), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is launching an integrated ''one face to the public'' approach across all communication channels to handle inquiries concerning a broad spectrum of public health topics. The overall objective is to ensure consistent, timely, reliable health information for dissemination to a variety of consumers (public, health professionals, researchers, etc.) and to address variations in inquiry volumes related to public health emergencies, news events, and dynamic, shifting public health priorities. The CDC has integrated over 40 hotlines into one Consumer Response Services Center—CDC–INFO. CDC–INFO has an exceptionally wide scope because content currently divided between over 40 hotlines handling nearly 2,000,000 telephone contacts annually will be consolidated under CDC–INFO. All CDC hotlines will be consolidated in one center beginning in February 2005, with all CDC program areas transitioning into CDC–INFO through a phased approach during the next three years. CDC–INFO itself will be operational for at least the next seven years.

The primary objectives of the national evaluation are to (1) Proactively evaluate customer interactions and service effectiveness by employing assessment measures and data collection mechanisms to support performance management, gathering insights and understandings for improving service levels, and implementing effective measures to meet customer satisfaction goals; (2) develop an ongoing understanding of customer requirements and satisfaction trends to achieve best of practice quality standards and to provide qualitative assessments, quantitative data, and cost factors to drive improvement and reinforce operational objectives; (3) measure CDC–INFO contractor service performance to assist in determining whether performance incentives have been achieved; and (4) to collect data in order to address public concern and response to emergencies, outbreaks, and media events.

Sample size, respondent burden, and intrusiveness have been minimized to be consistent with national evaluation objectives. Procedures will be employed to safeguard the privacy and confidentiality of participants. Pilot tests assisted in controlling burden and ensuring the user-relevance of questions. The following table shows the estimated annualized burden for data collection. There are no respondent costs other than the amount of time required to respond to the survey.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Data collection instrument	Number of respondents	Responses /respondent	Average burden/response (in hrs)	Average annual burden hours
Satisfaction survey (callers)	35,000	1	3/60	1,750
Satisfaction survey (e-mail inquiries)	336	1	3/60	17
Follow up survey	7,000	1	7/60	817
Key informant survey	5,000	1	7/60	583
Postcard survey	5,000	1	1/60	83
Special event survey	35,000	1	5/60	2,917

ESTIMATE OF ANNUALIZED BURDEN TABLE—Continued

Data collection instrument	Number of respondents	Responses /respondent	Average burden/response (in hrs)	Average annual burden hours
Emergency response survey	35,000	1	5/60	2,917
Total Burden Hours				9,084

Dated: July 15, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–14369 Filed 7–20–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–05–05CP]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Micro-Finance Project for HIV Prevention—New—National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting a 3-year approval from the Office of Management and Budget to conduct focus groups and administer a one-on-one qualitative interview to women who are at risk for HIV infection and community leaders in four communities in the southeastern United States.

The purpose of this project is to conduct formative research to determine the most realistic and efficacious approach for developing a micro-finance project to reduce HIV/STD-related risk behavior among unemployed or underemployed high-risk African-American women in the southeastern United States, who are among those most at risk for HIV infection in the country. The project addresses goals of the CDC HIV Prevention Strategic Plan,'' specifically the goal of decreasing the number of persons at high risk of acquiring or transmitting HIV infection. Information from this project will inform the development of economic empowerment interventions to reduce risk for HIV infection.

A focus group will be conducted with eight women (who are screened for eligibility) in each of the four communities (a total of 32 women) in the southeast United State with high prevalence of HIV and other sexually transmitted diseases. A subset of these women will participate in individual interviews. Another focus group will include community leaders in each of the four communities (a total of 32 individuals). The focus groups will capture demographic information, attitudes, and knowledge regarding income-generating activities that are feasible (can be done with small capitalization and by these women with some training and other preparation), attractive (women will do this work), and useful (likely to produce income to address a reasonable proportion of economic need; the community will use the service or purchase the product of the activity).

The subset of focus group participants who also participate in individual interviews (five women in each of the four communities, with a maximum of 20 individual interviews) will respond to more personal questions. The semi-structured individual interviews will explore behavioral, social, and economic conditions that might contribute to risk for HIV infection.

The focus groups and interviews will take about two hours each to complete. A screening interview for women participants will take about 10 minutes to complete. There are no costs to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Women—Screening interview	55	1	10/60	10
Women—Focus groups	32	1	2	64
Women—individual interviews	20	1	2	40
Community leaders—Focus groups	32	1	2	64
Total				178

Dated: July 15, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–14370 Filed 7–20–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–05–05CN]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

2005 Business Responds to AIDS (BRTA) Survey—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Business Responds to AIDS (BRTA) program is a partnership among CDC, business, labor, and the public health sector that began in 1992. The purpose of the program is to encourage businesses to implement HIV/AIDS policies and education programs in the workplace. CDC is requesting a 3-year approval from OMB to administer a survey to business owners or human resource directors to assess business practices and policies relating to HIV/AIDS in the workplace. This proposed data collection will incorporate some questions, but will be a shorter version, from a previously approved data collection, ''Business Responds to AIDS Benchmark Study,'' OMB No. 0920–0359, which expired on January 31, 1996.

The target population for the 2005 survey will be private-sector worksites employing 15 or more individuals and operating in the United States at the time of the survey. Selected worksites will be able to respond to the survey by telephone or electronically through the internet. An introductory letter describing the BRTA program and the survey will be mailed to each selected worksite two weeks prior to implementation of the actual survey. The initial point of contact at the worksites is expected to be the business owner for smaller sites and the human resources director for larger sites. This individual will be asked to either complete the interview or provide an appropriate referral within the company. CDC anticipates that information from the survey will allow the agency to revise and strengthen the objectives and strategies of the BRTA program in an effort to support business practices and policies related to HIV/AIDS.

There is no cost to respondents participate in the survey other than their time.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
Business Owners or Human Resources Directors	2,200	1	20/60	733

Dated: July 15, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–14371 Filed 7–20–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH) and Subcommittee for Dose Reconstruction and Site Profile Reviews.

Working Group Meeting Time and Date: 11 a.m.–1 p.m., EDT, Tuesday, July 26, 2005.

Place: Teleconference call via FTS Conferencing. The USA toll free dial in number is 1–800–988–9740 with a pass code of 56001.

Status: Open to the public, but without a public comment period.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, delegated to the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, and renewed on August 3, 2003.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on priority issues related to the Mallinckrodt Site Profile Review. Specifically, the identification and clarification of specific issues to be included in the review; finalization of a timeline to complete the review; setting a time and location for future meetings and interactions; and initiating discussions of technical issues as appropriate.

The agenda is subject to change as priorities dictate.

In the event a member of the working group cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–6825, fax (513) 533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–14380 Filed 7–20–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0083]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, and Forms FDA 356h and 2567

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 22, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, and Forms FDA 356h and 2567—(OMB Control Number 0910–0338)—Extension

Under Section 351 of the Public Health Services Act (the PHS Act) (42 U.S.C. 262), manufacturers of biological products must submit a license application for FDA review and approval before marketing a biological product in interstate commerce. Licenses may be issued only upon showing that the establishment and the products for which a license is desired meets standards prescribed in regulations designed to insure the continued safety, purity, and potency of such products. All such licenses are issued, suspended, and revoked as prescribed by regulations in part 601 (21 CFR part 601).

Section 601.2(a) requires manufacturers of a biological product to submit an application with accompanying information, including labeling information, to FDA for approval to market a product in interstate commerce. The container and package labeling requirements are provided under part 610 (21 CFR part 610) §§ 610.60, 610.61, and 610.62. The estimate for these regulations is included in the estimate under § 601.2(a) in table 1 of this document.

Section 601.5(a) requires licensees to submit to FDA notice of its intention to discontinue manufacture of a product or all products. Section 601.6(a) requires licensees to notify selling agents and distributors upon suspension of its license, and provide FDA with records of such notification.

Section 601.12(a)(2) requires, generally, that the holder of an approved biologics license application must assess the effects of a manufacturing change before distributing a biological product made with the change. Section 601.12(a)(4) requires applicants to promptly revise all promotional labeling and advertising to make it consistent with certain labeling changes implemented. Section 601.12(a)(5) requires applicants to include a list of all changes contained in the supplement or annual report; for supplements, this list must be provided in the cover letter. The burden estimates for § 601.12(a)(2) are included in the estimates for supplements (§ 601.12(b) and (c)) and annual reports (§ 601.12(d)). The burden estimates for § 601.12(a)(4) are included in the estimates under § 601.12(f)(4) in table 1 of this document or OMB control number 0910–0001 (expires May 31, 2008) because the required information is submitted with Forms FDA 2567 or 2253.

Section 601.12(b)(1) and (b)(3), (c)(1) and (c)(3), (c)(5), and (d)(1) and (d)(3) require applicants to follow specific procedures to inform FDA of each change, in the product, production process, quality controls, equipment, facilities, responsible personnel or labeling established in an approved license application. The appropriate procedure depends on the potential for the change to have a substantial, moderate, or minimal adverse effect on the identity, strength, quality, purity, or potency of the products as they may relate to the safety or effectiveness of the product. Under § 601.12(b)(4), applicants may ask FDA to expedite its review of a supplement for public health reasons or if a delay in making the change described in it would impose an extraordinary hardship on the applicant. The burden estimate for § 601.12(b)(4) is minimal and included in the estimate under § 601.12(b)(1) and (b)(3) in table 1 of this document.

Section 601.12(e) requires applicants to submit a protocol, or change to a protocol, as a supplement requiring FDA approval before distributing the product. Section 601.12(f)(1), (f)(2), and (f)(3) requires applicants to follow specific procedures to report labeling changes to FDA. The appropriate procedure depends on the potential for the change to have a substantial, moderate, or minimal adverse effect on the safety or effectiveness of the product. Section 601.12(f)(4) requires that applicants report to FDA advertising and promotional labeling and any changes. Section 601.45 requires that applicants of biological products for serious or life-threatening illnesses submit to the agency for consideration, during the preapproval review period, copies of all promotional materials, including promotional labeling as well as advertisements.

In addition to §§ 601.2 and 601.12, there are other regulations in parts 640, 660, and 680 (21 CFR parts 640, 660, and 680) that relate to information to be submitted in a license application or supplement for certain blood or allergenic products: Sections 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), 660.51(a)(4), 680.1(b)(2)(iii), and 680.1(d). In the table 1 of this document, the burden associated with the information collection requirements in these regulations is included in the burden estimate for § 601.2 and/or § 601.12. A regulation may be listed under more than one paragraph of § 601.12 due to the type of category under which a change to an approved application may be submitted.

There are also additional container and/or package labeling requirements for certain licensed biological products: Section 640.70(a) for source plasma; § 640.74(b)(3) and (b)(4) for source plasma liquid; § 640.84(a) and (c) for albumin; § 640.94(a) for plasma protein fraction; § 660.2(c) for antibody to Hepatitis B surface antigen; § 660.28(a) and (b) for blood grouping reagent; § 660.35(a), (c) through (g), and (i) through (m) for reagent red blood cells; § 660.45 for Hepatitis B surface antigen; and § 660.55(a) and (b) for anti-human globulin. The burden associated with the additional labeling requirements for submission of a license application for these certain biological products is minimal because the majority of the burden is associated with the requirements under §§ 610.60 through 610.62 or § 809.10 (21 CFR 809.10). Therefore, the burden estimates for these regulations is included in the estimate under §§ 610.60 through 610.62 in table 1 of this document. The burden estimates associated with § 809.10 are approved under OMB control number 0910–0485 (expires June 30, 2008).

Section 601.27(a) requires that applications for new biological products contain data that are adequate to assess the safety and effectiveness of the biological product for the claimed indications in pediatric subpopulations, and to support dosing and administration information. Section 601.27(b) provides that applicants may request a deferred submission of some or all assessments of safety and effectiveness required under § 601.27(a). Section 601.27(c) provides that applicants may request a full or partial waiver of the requirements under § 601.27(a). The estimate for § 601.27(a) is included in the burden estimate under § 601.2(a) in table 1 of this document since these regulations deal with information to be provided in an application.

Section 601.28 requires sponsors of licensed biological products to submit the information in § 601.28(a), (b), and (c) to the Center for Biologics Evaluation and Research (CBER) or the Center for Drug Evaluation and Research (CDER) each year, within 60 days of the anniversary date of approval of the license. Section 601.28(a) requires sponsors to submit to FDA a brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Section 601.28(b) requires sponsors to submit to FDA an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. Section 601.28(c) requires sponsors to submit to FDA a statement on the current status of any postmarketing studies in the pediatric population performed by, or on behalf of, the applicant.

Sections 601.33 through 601.35 clarify the information to be submitted in an application to FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals. The burden estimates for §§ 601.33 through 601.35 are included in the burden estimate under § 601.2(a) in table 1 of this document since these regulations deal with information to be provided in an application.

Section 601.91(b)(3) requires applicants to prepare and provide labeling with relevant information to a patient or a potential patient for biological products approved under the subpart when human efficacy studies are not ethical or feasible (or based on efficacy studies conducted in animals alone). Section 601.93 provides that biological products approved under this subpart are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products. Section 601.94 requires applicants under this subpart to submit to the agency for consideration during the preapproval review period copies of all promotional materials including promotional labeling as well as advertisements. Under § 601.93, any potential postmarketing reports and/or recordkeeping burdens would be included under the adverse experience reporting (AER) requirements under part 600 (21 CFR part 600) (OMB control number 0910–0308; pending extension of OMB approval). Therefore, any burdens associated with these requirements would be reported under the AER information collection requirements (OMB control number 0910–0308).

Section 610.11(g)(2) provides that a manufacturer of certain biological products may request an exemption from the general safety test (GST) requirements contained in this subpart. Under § 610.11(g)(2), FDA requires only those manufacturers of biological products requesting an exemption from the GST to submit additional information as part of a license application or supplement to an approved license application. Therefore, the burden estimate for § 610.11(g)(2) is included in the estimate under §§ 601.2(a) and 601.12(b) in table 1 of this document.

Section 610.67 requires certain biological products to comply with the bar code requirements in § 201.25 (21 CFR 201.25). Section 201.25 is approved under OMB control number 0910–0537 (expires February 28, 2007).

Section 680.1(c) requires that manufacturers update annually their license file with the list of source materials and the suppliers of the materials.

Sections 600.15(b) and 610.53(d) require the submission of a request for an exemption or modification regarding the temperature requirements during shipment and from dating periods, respectively, for certain biological products. Section 606.110(b) requires the submission of a request for approval to perform plasmapheresis of donors who do not meet certain donor requirements for the collection of plasma containing rare antibodies. Under §§ 600.15(b), 610.53(d), and 606.110(b), a request for an exemption or modification to the requirements would be submitted as a supplement. Therefore, the burden hours for any submissions under §§ 600.15(b), 610.53(d), and 606.110(b) are included in the estimates under § 601.12(b) in table 1 of this document.

Section 601.91(b)(2)(iii) provides that biological products approved under subpart H are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products.

In July 1997, FDA revised Form FDA 356h, ‘‘Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use,’’ to harmonize application procedures between CBER and the CDER. The application form serves primarily as a checklist for firms to gather and submit certain information to FDA. The checklist helps to ensure that the application is complete and contains all the necessary information, so that delays due to lack of information may be eliminated. The form provides key information to FDA for efficient handling and distribution to the appropriate staff for review. The estimated burden hours for submissions to CDER using FDA Form 356h are reported under OMB control number 0910–0001.

Form FDA 2567 ''Transmittal of Labels and Circulars'' is used by manufacturers of licensed biological products to submit labeling (e.g., circulars, package labels, container labels, etc.) and labeling changes for FDA review and approval. The labeling information is submitted with the form for license applications, supplements, or as part of an annual report. Form FDA 2567 is also used for the transmission of advertisements and promotional labeling. Form FDA 2567 serves as an easy guide to assure that the manufacturer has provided the information required for expeditious handling of their labeling by CBER. For advertisements and promotional labeling, manufacturers of licensed biological products may submit to CBER either Form FDA 2567 or 2253. Form FDA 2253 was previously used only by drug manufacturers regulated by CDER. In August of 1998, FDA revised and harmonized Form FDA 2253 so the form may be used to transmit specimens of promotional labeling and advertisements for biological products as well as for prescription drugs and antibiotics. The revised, harmonized form updates the information about the types of promotional materials and the codes that are used to clarify the type of advertisement or labeling submitted; clarifies the intended audience for the advertisements or promotional labeling (e.g., consumers, professionals, news services); and helps ensure the submission is complete.

Under table 1 of this document, the number of respondents is based on the estimated annual number of manufacturers that submitted the required information to FDA or the number of submissions FDA received. Based on information obtained from CBER's database system, there are 306 licensed biologics manufacturers. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The total annual responses are based on the estimated number of submissions (i.e., license applications, labeling and other supplements, protocols, advertising and promotional labeling, notifications) for a particular product received annually by FDA. Based on previous estimates, the rate of submissions is not expected to change significantly in the next few years. The hours per response are based on information provided by industry and past FDA experience with the various submissions or notifications. The hours per response include the time estimated to prepare the various submissions or notifications to FDA, and, as applicable, the time required to fill out the appropriate form and collate the documentation. Additional information regarding these estimates is provided below as necessary.

Under §§ 601.2 and 601.12, the estimated hours per response are based on the average number of hours to submit the various submissions. The estimated average number of hours is based on the range of hours to complete a very basic application or supplement and a complex application or supplement.

Under § 601.6(a), the total annual responses are based on FDA estimates that establishments may notify an average of 20 selling agents and distributors of such suspension, and provide FDA of such notification.

The number of respondents is based on the estimated annual number of suspensions of a biologic license.

Under §§ 601.12(f)(4) and 601.45, manufacturers of biological products may use either Form FDA 2567 or Form FDA 2253 to submit advertising and promotional labeling. Based on information obtained from CBER's database system, there were an estimated 3,600 submissions of advertising and promotional labeling in fiscal year 2004. FDA estimates that approximately 15 percent of those submissions were received with Form FDA 2567 resulting in an estimated 540 submissions. The burden hours for the remaining submissions received using Form FDA 2253 are reported under OMB control number 0910–0376 (expires May 31, 2008).

Under §§ 601.91 through 601.94, FDA expects to receive very few applications of this nature; however, for calculation purposes, FDA is estimating the submission of one application annually. Under §§ 601.91(b)(3) and 601.94, FDA estimates 240 hours for a manufacturer of a new biological product to develop patient labeling, and to submit the appropriate information and promotional labeling to FDA. The majority of the burden for developing the patient labeling is included under the reporting requirements for § 601.94, therefore minimal burden is calculated for providing the guide to patients under § 601.91(b)(3).

There were also 3,540 amendments to an unapproved application or supplement and 23 resubmissions (total of 3,563 submissions) submitted using Form FDA 356h.

In the **Federal Register** of March 15, 2005 (70 FR 12693), FDA published a 60-day notice requesting public comment on the information collection provisions to which one comment was received. The comment was in response to whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility. The comment generally stated an opinion that the information collection program is not necessary, does not protect Americans, and is costly without justification. The comment did not request any action, nor did they provide data to support a change to the information collection requirements.

Information collection is a statutory requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). FDA cannot abolish or modify the information collection requirements provided in the regulations (5 CFR 1320.3(c)) unless the statute is changed. Changing the statute is beyond FDA's authority and control.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form FDA No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
601.2(a), 610.60, 610.61, and 610.62[2]	2567/356h	14	2	28	860	24,080
601.5(a)	NA	16	3.13	50	.33	17

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form FDA No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
601.6(a)	NA	1	21	21	.33	7
601.12(a)(5)	NA	190	15.7	2,983	1	2,983
601.12(b)(1) and (b)(3)[3]	356h	190	4.75	903	80	72,240
601.12(c)(1) and (c)(3)[4]	356h	98	2.60	255	50	12,750
601.12(c)(5)[4]	356h	34	1.38	47	50	2,350
601.12(d)(1) and (d)(3)[5]	356h	166	1.37	227	22.5	5,107.5
601.12(e)	356h	14	1.43	20	120	2,400
601.12(f)(1)	2567	12	1	12	40	480
601.12(f)(2)	2567	10	1	10	20	200
601.12(f)(3)	2567	70	1.43	100	10	1,000
601.12(f)(4)[6] and 601.45	2567	15	36	540	10	5,400
601.25(b)(3)	NA	0	0	0	0	0
601.26(f)	NA	0	0	0	0	0
601.27(b)	NA	3	1	3	24	72
601.27(c)	NA	7	1	7	8	56
601.28(a)	NA	44	3.27	144	8	1,152
601.28(b)	NA	44	3.27	144	24	3,456
601.28(c)	NA	44	3.27	144	1.5	216
601.91(b)(3) and 601.94	NA	1	1	1	240	240
610.67	NA	174	31	5,400	24	129,600
680.1(c)	NA	10	1	10	2	20
Amendments/Resubmissions	356h	306	11.6	3,563	20	71,260
Total						335,086.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The reporting requirements under §§ 601.27(a), 601.33, 601.34, 601.35, 610.11(g)(2), 640.17, 640.25(c), 640.56(c), 640.74(b)(2), 660.51(a)(4), and 680.1(b)(2)(iii) are included in the estimate under § 601.2(a). The reporting requirements under §§ 640.70(a); 640.74(b)(3) and (b)(4); 640.84(a) and (c); 640.94(a); 660.2(c); 660.28(a) and (b); 660.35(a), (c) through (g), and (i) through (m); 660.45; and 660.55(a) and (b) are included under §§ 610.60 through 610.62.
[3].The reporting requirements under §§ 600.15(b), 601.12(a)(2), 601.12(b) (4), 610.11(g)(2), 610.53(d), 606.110(b), 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), and 680.1(d) are included in the estimate under § 601.12(b)(1) and (b)(3).
[4] The reporting requirements under §§ 601.12(a)(2), 640.17, 640.25(c), 640.56(c), and 640.74(b)(2) are also included in the estimate under § 601.12(c)(1) and (c)(3) or (c)(5).
[5].The reporting requirements under § 601.12(a)(2) are also included in the estimates under § 601.12(d)(1) and (d)(3).
[6].The reporting requirements under § 601.12(a)(4) are included in the estimates under § 601.12(f)(4) or OMB control number 0910–0001 since the required information is submitted with Form FDA 2567 or 2253.

Under table 2 of this document, the estimated recordkeeping burden of 1 hour is based on previous estimates for the recordkeeping requirements associated with the AER system.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
601.91(b)(2)(iii)	1	1	1	1	1

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 14, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–14330 Filed 7–20–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0274]

Draft Voluntary Hazard Analysis and Critical Control Point Manuals for Operators and Regulators of Retail and Food Service Establishments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two draft manuals entitled ''Managing Food Safety: A Manual for the Voluntary Use of HACCP Principles for Operators of Food Service and Retail Establishments'' (the ''Operator's Manual'') and ''Managing Food Safety: A Regulator's Manual for Applying HACCP Principles to Risk-Based Retail and Food Service Inspections and Evaluating Voluntary Food Safety Management Systems'' (the ''Regulator's Manual''). The Operator's Manual presents FDA's best advice to retail and foodservice operators for voluntarily implementing food safety management systems based on hazard analysis and critical control point (HACCP) principles to reduce the occurrence of foodborne illness risk factors. The Regulator's Manual is intended to assist State, local, and tribal regulatory authorities in identifying and assessing control of foodborne illness risk factors during routine inspections of retail and foodservice establishments by providing a risk-based inspection methodology.

DATES: Submit written or electronic comments concerning the draft manuals and their recommendations for collection of information by September 19, 2005.

ADDRESSES: Submit written comments concerning the draft manuals and their recommendations for collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft manuals and their recommendations for collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the draft manuals to Margaret Boone, Center for Food Safety and Applied Nutrition (HFS–625), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1559. Send one self-adhesive address label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft manuals and received comments.

FOR FURTHER INFORMATION CONTACT: Alan Tart, Office of Regulatory Affairs, Southeast Regional Office, State Cooperative Programs (HFR–SE670), Food and Drug Administration, 60 8th St., NE., Atlanta, GA 30309, 404–253–1267.

SUPPLEMENTARY INFORMATION:

I. Background

While the responsibility for regulating retail and foodservice establishments lies primarily with State, local, and tribal jurisdictions, FDA provides assistance to these jurisdictions through multiple means, including but not limited to, training and technical assistance. Authority for providing such assistance is derived from section 311 of the Public Health Service Act (42 U.S.C. 243). In addition, FDA's mission under section 903(b)(2)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2)(A)) includes ensuring that foods are safe, wholesome, and sanitary, and section 903(b)(4) of the act directs FDA to cooperate with food retailers, among others, in carrying out this part of its mission.

The Centers for Disease Control and Prevention has identified the major contributing factors associated with foodborne illness outbreaks. Five of these contributing factors directly relate to retail and foodservice establishments and are called ''foodborne illness risk factors'' by FDA. Food safety management systems based on HACCP principles are designed to reduce the occurrence of these risk factors through preventive controls. For industry, the rationale for developing and implementing a food safety management system based on HACCP principles is to ensure that final products are not contaminated with agents that could cause foodborne illness or injury. In an effort to assist State, local, and tribal regulators and the retail and foodservice entities they regulate, FDA has developed two draft manuals for the voluntary use of HACCP principles in retail and foodservice establishments.

The Operator's Manual provides operators of retail and foodservice establishments with a step-by-step scheme for designing and voluntarily implementing food safety management systems based on HACCP principles. By voluntarily implementing food safety management systems, active managerial control of foodborne illness risk factors can be achieved. Any operator of a retail or foodservice establishment is encouraged to voluntarily utilize the methods and procedures presented in the draft manual.

The Regulator's Manual provides State, local, and tribal regulatory authorities with a step-by-step scheme for conducting risk-based inspections based on HACCP principles. In addition, the draft manual details intervention strategies that can be developed with retail and foodservice operators to reduce the occurrence of foodborne illness risk factors. It also provides a methodology for evaluating voluntarily-implemented food safety management systems, if invited to do so, by retail or foodservice operators.

Comments received from the Conference for Food Protection (CFP) have been incorporated into the draft manuals. The CFP is composed of regulators, industry, academia, professional organizations, and consumers. Its purpose is to identify problems, formulate recommendations, and develop and implement practices that relate to food safety. In 2004, CFP endorsed both draft manuals with a recommendation that both industry and regulatory entities consider implementing the principles of the documents into their respective food safety programs.

The utilization of voluntary food safety management systems by industry, as well as the incorporation of a risk-based methodology into regulatory inspection programs, are important elements in reaching the goals established by the President's Council on Food Safety and also FDA program goals.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Voluntary HACCP Manuals for Operators and Regulators of Retail and Food Service Establishments

The draft Operator's Manual contains information and recommendations for operators of retail and foodservice establishments who wish to develop and implement a voluntary food safety management system based on HACCP principles. Operators may decide to incorporate some or all of the principles presented in the draft manual into their existing food safety management systems. The recordkeeping practices discussed in the draft manual are voluntary and may include documenting certain activities, such as monitoring and verification, which the operator may or may not deem necessary to ensure food safety. The draft manual includes optional worksheets to assist operators in developing and validating a voluntary food safety management system.

The draft Regulator's Manual contains recommendations for State, local, and tribal regulators on conducting risk-based inspections of retail and foodservice establishments, including recommendations about recordkeeping practices that can assist operators in preventing foodborne illness. These recommendations may lead to voluntary actions by operators based on consultation with regulators. For example, an operator may develop a risk control plan as an intervention strategy for controlling specific out-of-control foodborne illness risk factors identified during an inspection. Further, the draft manual contains recommendations to assist regulators when evaluating voluntary food safety management systems in retail and foodservice establishments. Such evaluations typically consist of the following two components: Validation (assessing whether the establishment's voluntary food safety management system is adequate to control food safety hazards) and verification (assessing whether the establishment is following its voluntary food safety management system). The draft manual includes a sample ''Verification Inspection Checklist'' to assist regulators when conducting verification inspections of establishments with voluntary food safety management systems.

Types of operator records discussed in the manuals and listed in the following burden estimates include: Food safety management systems (plans that delineate the formal procedures to follow to control all food safety hazards in an operation); risk control plans (HACCP-based, goal-oriented plans for achieving active managerial control over specific out-of-control foodborne illness risk factors); hazard analysis (written assessment of the significant food safety hazards associated with foods prepared in the establishment); prerequisite programs (written policies or procedures, including but not limited to, standard operating procedures, training protocols, and buyer specifications that address maintenance of basic operational and sanitation conditions); monitoring (records showing the observations or measurements that are made to help determine if critical limits are being met and maintained); corrective action (records indicating the activities that are completed whenever a critical limit is not met); ongoing verification (records showing the procedures that are followed to ensure that monitoring and other functions of the food safety management system are being implemented properly; and validation (records indicating that scientific and technical information is collected and evaluated to determine if the food safety management system, when properly implemented, effectively controls the hazards).

All recommendations in both manuals are voluntary. For simplicity and to avoid duplicate estimates for operator recordkeeping practices that are discussed in both manuals, the burden for all collection of information recommendations for retail and foodservice operators are estimated together in table 1 of this document, regardless of the manual in which they appear. Collection of information recommendations for regulators in the Regulator's Manual are listed separately in table 2 of this document.

Description of Respondents: The likely respondents to this collection of information are operators and regulators of retail and foodservice establishments.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR OPERATORS[1]

Types of Records	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Food Safety Management System	50,000[2]	1	50,000	60	3,000,000
Hazard Analysis	50,000[2]	1	50,000	20	1,000,000
Prerequisite Program Records	100,000[3]	365	36,500,000	0.1	3,650,000
Monitoring Records	100,000[3]	365	36,500,000	0.3	10,950,000
Corrective Action Records	100,000[3]	365	36,500,000	0.1	3,650,000
Ongoing Verification Records (includes calibration records)	100,000[3]	365	36,500,000	0.1	3,650,000
Validation Records	50,000[3]	1	50,000	4	200,000

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR OPERATORS[1]—Continued

Types of Records	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Total First Year Burden:[4]					26,100,000
Annual Burden:[4]					22,100,000
Risk Control Plan	50,000	1	50,000	2	100,000
Monitoring Records	100,000	90	9,000,000	0.3	2,700,000
Corrective Action Records	100,000	90	9,000,000	0.1	900,000
Ongoing Verification Records (includes calibration records)	100,000	90	9,000,000	0.1	900,000
Annual Burden[5]					4,600,000
Total Annual Burden for Operators (Excluding First Year)					26,700,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] First year burden only.
[3] Annual burden.
[4] Burden for developing and implementing a food safety management system based on the Operator's Manual.
[5] Annual burden for developing and implementing a risk control plan based on the Regulator's Manual.

The burden for these activities may vary among retail and foodservice operators depending on the type and number of products involved, the complexity of an establishment's operation, the nature of the equipment or instruments required to monitor critical control points, and the extent to which an operator uses the Operator's Manual and/or the Regulator's Manual. The estimate does not include collections of information that are a usual and customary part of an operator's normal activities.

FDA has established as a goal to have 50,000 (1/2 of 1 percent) of the approximately one million U.S. retail and foodservice operators implement the recommendations outlined in the two manuals. This target figure is used in calculating the burden in tables 1 and 2 of this document because the agency lacks data on how to base an estimate of how many retail and foodservice establishments are likely to use one or more of the manuals to voluntarily implement a comprehensive food safety management system based on HACCP principles or a risk control plan for out-of-control processes identified during an inspection. FDA's estimate of the total number of retail and foodservice establishments is based on numbers obtained from the two major trade organizations representing these industries, the Food Marketing Institute and the National Restaurant Association, respectively. FDA seeks comments on this estimate.

The hour burden estimates in table 1 of this document for operators who follow the HACCP-based recommendations in the Operator's Manual are based on the estimated average annual information collection burden for mandatory HACCP rules, including seafood HACCP (60 FR 65096 at 65178, December 18, 1995) and juice HACCP (66 FR 6138 at 6202, January 19, 2001). FDA estimates that during the first year, 20 labor hours are needed to conduct the hazard analysis and 60 labor hours are needed to develop a food safety management system (HACCP plan). Once the system is in place, the annual frequency of records is based on 365 operating days per year. Assuming there is one recordkeeper per shift of operation, the agency estimates that two recordkeepers per day would be needed to conduct monitoring, corrective action, recordkeeping, and verification outlined in the system. The agency further estimates that validation will be conducted once per year, based on menu or food list changes, changes in distributors, or changes in food preparation processes used. The validation will require a total of 4 labor hours.

The second set of estimates in table 1 of this document shows the annual burden for developing and implementing a risk control plan to control specific out-of-control foodborne illness risk factors identified during an inspection by a State, local, or tribal regulatory authority. If an operator decides to use a risk control plan as recommended in the Regulator's Manual, one person from the establishment is needed to work with the regulator to develop the written plan. FDA estimates that two recordkeepers per day (one recordkeeper for each shift) would be needed to conduct monitoring, corrective action, recordkeeping, and verification outlined in the risk control plan. The estimated duration of implementation for a risk control plan is 90 days, which is the minimum recommended time to achieve long-term behavior change.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR REGULATORS[1]

Types of Records	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Voluntary Food Safety Management System Evaluation (includes validation, verification, and completion of verification inspection checklist)	50,000	1	50,000	16	800,000
Total Annual Burden for Regulators					800,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

It is difficult to predict the number of State, local, and tribal regulatory jurisdictions that will use the Regulator's Manual. But FDA anticipates that retail and foodservice establishments which voluntarily develop and implement a food safety management system based on the Operator's Manual will request their regulatory authorities to conduct an evaluation of their system. The estimates in table 2 of this document for the annual burden to State, local, and tribal regulators that follow the recommendations in the Regulator's Manual were calculated based on the usual time needed for one person to evaluate a voluntarily-implemented food safety management system and record the findings. The number of times an inspector may be asked by an operator to evaluate a voluntarily-implemented system is not expected to exceed once per year.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft manuals and their recommendations for collection of information. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft manuals and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

An electronic version of these draft manuals is available on the Internet at *http://www.fda.gov/*.

Dated: July 13, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–14321 Filed 7–20–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The Effectiveness of the NIH Curriculum Supplements and Workshops Survey

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, Office of Science Policy, Office of Science Education, National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection has not been previously published in the **Federal Register**. The purpose of this notice is to allow 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

Proposed Collection: Title: The Effectiveness of the NIH Curriculum Supplements and Workshops Survey. *Information Collection Request:* NEW. *New and Use of Information Collection:* The survey will attempt to assess the effectiveness of the NIH curriculum supplements in aiding teachers to teach science in a more engaging and interactive way. The supplements help k–12 educators teach science in more engaging and effective ways by featuring the latest NIH research. A typical supplement contains two weeks of student activities on the science behind a health topic, such as cancer, sleep or obesity. Web-based simulations, animations and experiments enhance the ''pencil and paper'' activities. In addition to developing and distributing the supplements, OSE conducts professional workshops to help teachers successfully implement these lessons with their students. Since January 2000, over 3,000 teachers have attended an OSE workshop.

Assessing the effectiveness of the NIH Curriculum Supplements and teacher workshops is critical to determining if OSE is successfully fulfilling its mission. OSE has the database infrastructure in place to easily collect customer satisfaction data from supplement requests and workshops attendees. At present, we do not have clearance to contact our customers to determine how NIH resources are meeting their educational needs.

BURDEN ESTIMATES

Type of respondent: survey title	Number of respondents	Frequency of response	Ave. time per response	Hour burden/yr
Teacher: supplement requestor survey	9,000	1	0.17	500
Teacher: focus group participant	60	1	2.0	120
Teacher: workshop short survey	1,300	1	0.17	220
Teacher: workshop long survey	260	1	0.5	130
Teacher: Career video requestor	500	1	0.17	85
Teacher: Career poster requestor	585	1	0.17	100

BURDEN ESTIMATES—Continued

Type of respondent: survey title	Number of respondents	Frequency of response	Ave. time per response	Hour burden/yr
Total	11,735			1,155

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) ways to enhance the quality,utility, and clarity of the information to be collected; and (3) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20502, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and survey, contact: Dr. David Vannier, Office of Science Education, 6705 Rockledge Drive, Suite 700, Bethesda, MD 20817, or call 301–496–8741, or e-mail you request including your address to: *vannierd@od.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received with 30 days of the date of this publication.

Dated: July 12, 2005.

Cassandra Isom,

Program Administrator, Office of Science Education, National Institutes of Health.

[FR Doc. 05–14421 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee C—Basic & Preclinical.

Date: August 10–12, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Ctr. 5701 Marinelli Rd., N. Bethesda, MD 20852.

Contact Person: Michael B. Small, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892, 301–402–0996, *smallm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 8, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14427 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee D—Clinical Studies.

Date: August 10–12, 2005.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott and Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Research Programs Review Branch, National Cancer Institute, Division of Extramural Activities, 6116 Executive Blvd., 8th Floor, Bethesda, MD 20892–8328, 301–496–9767, *wm63f@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 8, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14428 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Advisory Board NCAB Subcommittee on Planning and Budget.

Date: July 21, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To continue subcommittee discussion of possible metrics for research outcomes, communicating research results and plan agendas for upcoming subcommittee meetings.

Place: National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 205, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cherie Nichols, Executive Secretary, National Cancer Institute, National Institute of Health, Building 6116, Room 205, Bethesda, MD 20892, (301) 496–5515.

This notice is being published less than 15 days prior to the meeting date due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14433 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: July 28, 2005.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838.

This notice is hereby being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14434 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the pubic in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Lung Pollution.

Date: August 4, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K.Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and finding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 11, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14422 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Strategic Program for Innovative Research on Drug Addiction Pharmacotherapy (SPIRDAP).

Date: August 9, 2005.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark Swieter, PhD, Chief, Training and Special Projects Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, 6101 Executive Boulevard, Suite 220, Bethesda, MD 20892–8401, (301) 435–1389, *ms80x@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 8, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14423 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Short Programs for Interdisciplinary Research Training.

Date: July 29, 2005.

Time: 10:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Estrogen and Lactotrophs.

Date: August 2, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara A. Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 8, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14426 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel Contract Continuation of Research Registry for FSHD/DM.

Date: July 20, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Room 1068, MSC 4874, Bethesda, MD 20892–4874, (301) 594–4955, *browneri@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14429 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Neuroscience Core Supplement.

Date: July 18, 2005.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific

Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Neural Mechanism in Sleep Disorders.

Date: July 26, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0600, *sawczuka@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Emphasis Panel Studies In Sleep Physiology.

Date: August 4, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Oxygen Therapies.

Date: August 5, 2005.

Time: 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5980, kw47o@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 8, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14431 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 05–80, Review R13.

Date: August 9, 2005.

Time: 10 a.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4827.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14432 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited K Application.

Date: July 27, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (telephone conference call).

Contact Person: Quirijn Vos, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *qvos@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limiations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institute of Health, HHS.)

Dated: July 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14435 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meetings will be closed to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, Lister Hill Center.

Date: September 22–23, 2005.

Open: September 22, 2005, 9 a.m. to 12:30 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 22, 2005, 12:30 p.m. to 1 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 22, 2005, 1 p.m. to 5 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 23, 2005, 9 a.m. to 12 p.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38A, Room 7N–707, Bethesda, MD 20892, 301–496–4441, *jduley@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14424 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Biology.

Date: July 18, 2005.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, NAED Member Conflict Applications.

Date: July 18, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts—Metabolism and AIDS.

Date: July 18, 2005.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts—AIDS Immunology and Vaccines.

Date: July 19, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts—AIDS Drug Abuse and Metabolism.

Date: July 19, 2005.

Time: 3:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts—AIDS Molecular and Cell Biology.

Date: July 20, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852,Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts—NeuroAIDS.

Date: July 21, 2005.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852,Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Environmental Tobacco Smoke.

Date: July 25, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848,Bethesda, MD 20892. (301) 435–0912. *levinv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts—AIDS Molecular Biology.

Date: July 26, 2005.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852,Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts—AIDS Immunology and Pathogenesis.

Date: July 27, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852,Bethesda, MD 20892. (301) 435–1167. *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genes and Clocks in Neurospora and Yeast.

Date: July 28, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850,Bethesda, MD 20892. (301) 435–1257. *baizerl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mathematical Modeling of Gene Expression and Metabolism.

Date: July 28, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health; 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7849, Bethesda, MD 20892. (301) 435–2810. *zullost@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ICBG Study Section.

Date: August 3, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont, Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Dan D. gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892. (301) 594–6830. *gerendad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Orthopedic Medicine Applications.

Date: August 3–4, 2005

Time: 8 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham, Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892. (301) 436–6809. *bartletr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Shared Analytical Ultracentrifuge Review Panel.

Date: August 5, 2005.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 210892, (Telephone Conference Call).

Contact Person: Ross D. Shonat, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 rockledge Drive, Room 3022A, MSC 7849, Bethesda, MD 20892. (301) 435–2786. *shonatr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Sciences and Technologies Special Emphasis Panel.

Date: August 5, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Zhenya Li, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022B, MSC 7849, Bethesda, MD 20892. (301) 435–2417. *lizhenya@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Minority/Disability Predoctoral Fellowships.

Date: August 8–9, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zhiglang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892. (301) 451–0132. *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Hypothalamic Peptides.

Date: August 8, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892. (301) 435–1245. *marcusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Fever Mechanisms.

Date: August 9, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 10892 (Telephone Conference Call).

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892. (301) 435–1245. *marcusr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893,

Dated: July 8, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14430 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EMNR Member Conflict.

Date: July 20, 2005.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Abubakar A. Shaikh, PhD, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synapses and Connectivity.

Date: July 25, 2005.

Time: 1 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fufii@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Delivery for Lung Disease.

Date: July 26, 2005.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander Gubin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel UKGD Member Conflicts.

Date: July 26, 2005.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shirley Holden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, 301–435–1198, *hildens@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN J 02S: Spinal Abnormalities in Neurofibromatosis.

Date: July 27, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, 301–435–1184, *joshij@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Juvenile Idiopathic Arthritis.

Date: August 2, 2005.

Time: 5:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel F. McDonald, PhD, Chief, Renal and Urological Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Plasticity and Development.

Date: August 4, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *braizerl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac ATP Synthesis.

Date: August 4, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Beamlines Pand Magnets.

Date: August 4, 2005.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, (301) 435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDA–A–02M: Member Conflict.

Date: August 4, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7843, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.39693.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health HHS)

Dated: July 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–14436 Filed 7–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4977–N–05]

Notice of Proposed Information Collection: PD&R and PATH Cooperative Research Program-Reporting Requirements

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 19, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dana Bres, Research Engineer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8134, Washington, DC 20410, telephone number (202) 708–4370 extension 5919 (this is not a toll-free number) for copies of the proposed forms and other available documents:

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.* permitting electronic submission of responses).

Title of Proposal: PD&R and PATH Cooperative Research Program—Reporting Requirements.

Description of the need for the information and proposed use: This information collection is required to manage the cooperative research efforts administered by PD&R and the Partnership for Advancing Technology in Housing (PATH). This information collection will cover the periodic (quarterly) reporting and invoicing requirements for PD&R/PATH Cooperative Agreements.

Without this collection, potential research partners would not be able to report on the agreement progress necessary to effectively inform the Government.

Agency form numbers, if applicable: None.

Members of affected public: Recipients of PD&R or PATH Cooperative Agreements. These include housing researchers, trade organizations, and industry professionals. The number of organizations is estimated to be 20.

Estimation of the total numbes of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Narrative progress report	20	quarterly	3	240
Invoicing	20	quarterly	1.167	93
SF 269A	20	annual	1.5	30

Total Estimated Annual Burden Hours: 283.

Number of copies to be submitted to the Office of Policy Development and Research for evaluation: One (original).

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 8, 2005.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 05–14331 Filed 7–20–05; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4977–N—06]

Notice of Proposed Information Collection on PD&R and the Partnership for Advancing Technology in Housing Cooperative Research Efforts

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 19, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Dana Bres, Research Engineer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8134, Washington, DC 20410, telephone number (202) 708–4370 extension 5919 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Title of Proposal: Office of Policy Development and Research and Partnership for Advancing Technology in Housing Cooperative Research efforts.

Description of the need for the information and proposed use: This information collection is required to solicit proposals for cooperative research with the Office of Policy Development and Research (PD&R) and the Partnership for Advancing Technology in Housing (PATH) program seeks proposals for cooperative research efforts from housing researchers and others in areas of mutual interest.

Following collection of the proposals, the data (the proposals) will be evaluated in a process that will lead to the award of cooperative agreements for research and other activities. Without this collection, potential research partners would not be able to apply for cooperative agreements to conduct such activities.

Agency form numbers, if applicable:

Application for Federal Assistance (Form HUD–424);

Applicant Assurances and Certifications (Form HUD 424–B);

Detailed Budget (Form HUD–424–CB);

Detailed Budget Worksheet (Form HUD–424–CBW);

Disclosure of Lobbying Activities, if required (Standard Form LLL);

Disclosure/Update Report (Form HUD–2880);

Acknowledgment of Application Receipt (Form HUD–2993);

Client Comments and Suggestions (Form HUD–2994).

Members of affected public: Housing researchers, trade organizations, community research organizations, and university researchers. The number of organizations is estimated to be 40.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Task	Number of respondents	Frequency of responses	Hours per response	Burden hours
Summary Proposal	50	once	12.92	646
Full Proposal Development	25	once	39	975
Grant Start Up	20	once	26	520

Total Estimated Annual Burden Hours: 2,141.

Number of copies to be submitted to the Office of Policy Development and Research for evaluation: Four (original and three copies).

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 8, 2005.

Harold L. Bunce,

Deputy Assistant Secretary for Economic Affairs.

[FR Doc. 05–14332 Filed 7–20–05; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Wheeler National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Assessment for Wheeler National Wildlife Refuge Complex in Lauderdale, Limestone, Jackson, Madison and Morgan Counties, Alabama.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a Comprehensive Conservation Plan and Environmental Assessment for the Wheeler National Wildlife Refuge Complex, pursuant to the National Environmental Policy Act and its implementing regulations.

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

The purpose of this notice is to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: An open house style meeting will be held during the scoping phase of the comprehensive conservation plan development process. Special mailings, newspaper articles, and other media announcements will be used to inform the public and State and local government agencies of the dates and opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to John Beck, Refuge Planner, Fish and Wildlife Service, 2700 Refuge Headquarters Road, Decatur, Alabama 35603; telephone: (256) 353–7243; Fax: (256) 340–9728; e-mail: *john_beck@fws.gov*. To ensure consideration, written comments must be received no later than September 6, 2005. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: Wheeler National Wildlife Refuge, in the Tennessee River Valley of northern Alabama, was established by executive order on July 7, 1938. The refuge is situated within the middle third of the Tennessee Valley Authority's Wheeler Reservoir on land purchased in 1934 and 1935 by the Authority to serve as a buffer strip around the reservoir, which was impounded in 1936. The refuge contains land within Morgan, Limestone, and Madison Counties, and is in close proximity to the cities of Huntsville and Decatur, Alabama. The refuge consists of approximately 35,000 acres, including 19,500 acres of land and 15,500 acres of water. It is well developed with more than 100 miles of graveled roads, 2,500 acres of managed wetlands, a modern Headquarters Complex with a large Visitor Center and a Waterfowl Observation Building. Public use is heavy and approximately 700,000 visitors are reported annually.

The primary purpose of the refuge is to provide habitat, food, and shelter for migratory waterfowl and other wildlife. This refuge supports Alabama's only significant concentration of wintering Canada geese. It also serves as winter habitat for the State's largest duck population. It was the first national wildlife refuge placed on a multipurpose reservoir and has supported up to 60,000 geese and nearly 100,000 ducks, although peaks until 1990 were nearer 30,000 geese and 60,000 ducks. Since 1990, winter goose populations have dropped significantly; below 15,000 from 1990–1995 and about 2,500–5,500 in the last few years. Snow geese are now the most prominent competent of the winter goose population, peaking near 1,500–3,200 in recent years. The refuge supports interesting flora, a bird list consisting of 288 species, 47 species of mammals, 115 species of fish and a wide variety (74 species) of reptiles and amphibians. Furthermore, the refuge is home to 10 federally protected endangered species.

Wheeler Refuge has three satellite refuges, all established to protect endangered species. These are: Sauta Cave (formerly Blowing Wind Cave) National Wildlife Refuge, near Scottsboro, Jackson County, Alabama; Fern Cave National Wildlife Refuge, near Paint Rock, Jackson County, Alabama; and Key Cave National Wildlife Refuge near Florence, Lauderdale County, Alabama. All together, these refuges comprise the Wheeler National Wildlife Refuge Complex.

Sauta Cave Refuge consists of 264 acres and was purchased in 1978 to provide protection for the federally endangered gray bat (*Myotis grisescens*) and the Indiana bat (*Myotis sodalis*) and their critical habitat. The cave provides a summer roosting site for about 200,000–300,000 gray bats and a winter hibernaculum for both the gray and Indiana bat. There are two entrances into the cave on the refuge but they are closed to the public.

As is the case with many large caves, rare and unique species occur in Sauta Cave. As a result, the Alabama Natural Heritage Program ranks the cave's biodiversity as a site of very high significance. In addition to the rare fauna within the cave, the federally endangered Price's potato bean (*Apios priceana*) occurs on the refuge. All 264 acres of habitat outside of the cave are predominately hardwood forest.

Fern Cave Refuge was purchased in 1981 to provide protection for the federally endangered gray and Indiana bats. It consists of 199 cares of forested hillside underlain by a massive cave with many stalactite- and stalagmite-filled rooms. The cave has five hidden entrances with four occuring on the refuge. The refuge contains the largest wintering colony of gray bats in the United States with more than one million bats hibernating there in the winter. Bat experts also think that as many as one million Indiana bats may be using the cave.

Access is extremely difficult and has been described as a vertical and horizontal maze by expert cavers. Horizontal sections of the cave are known to be more than 15 miles long and vertical drops of 450 feet are found within. Spectacular features, including unrivaled formations, important paleological and archaeological finds, and diverse cave fauna, have contributed to Fern Cave being described as the most spectacular cave in the United States. Additionally, the endangered American Hart's-tongue fern (*Phyllitis scolopendrium*) is found on the refuge.

Key Cave Refuge, about 5 miles southwest of Florence, Alabama, was established in 1997 to ensure the biological integrity of Key Cave, Collier Cave, and the aquifer common to both. Key Cave has been designated as critical habitat for the endangered Alabama cavefish (*Speoplatyrhinus poulsoni*) and as a priority one maternity cave for the endangered gray bat. Collier Cave, approximately 1.5 miles upstream from Key Cave and within the acquisition boundary, is important to both species as potential habitat. Both caves are on the northern shore of Pickwick Lake in a limestone karst area that contains numerous sinkholes and several underground cave systems. the area's sinkholes are an integral component of groundwater recharge to the caves. The area directly north of Key Cave was identified as a potential high hazard risk area for groundwater recharge and this is where the 1,060-acre refuge was established.

Two species of blind crayfish (*Procambarus pecki* and *Cambarus jonesi*) also inhabit Key Cave. Several bird species that are of management concern also use the refuge's grasslands. These species include grasshopper sparrows, dickcissels, northern harriers, short-eared owls, loggerhead shrikes, and northern bobwhites.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1977, Public Law 105–57.

Dated: June 17, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–14382 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Application for an Incidental Take Permit for the Lockheed Martin Corporation Project, Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application; notice of availability.

SUMMARY: In response to an application from the Lockheed Martin Corporation (applicant), the U.S. Fish and Wildlife Service (we, Service) is considering issuance of a 5-year incidental take permit for 1 covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). In response to this application, we are making it available for public review and comment. If approved, the permit would authorize take of species listed under the ESA incidental to otherwise lawful activities associated with proposed groundwater and soil contamination investigations on the 9,117-acre Potrero Creek and 2,500-acre

Laborde Canyon sites, located in Beaumont, Riverside County, California.

DATES: Written comments should be received on or before August 22, 2005.

ADDRESSES: Please address written comments to Mr. Jim Bartel, Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Rd., Carlsbad, California 92009. You may also send comments by facsimile to (760) 918–0638.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: (760) 431–9440.

SUPPLEMENTARY INFORMATION: The permit application and Environmental Action Statement (EAS) are available for public review and comment. The application includes a proposed habitat conservation plan (HCP).

Documents are posted on the Intranet at *http://carlsbad.fws.gov.* Alternatively, you may obtain copies of these documents by calling the person named in the section of this notice titled **FOR FURTHER INFORMATION CONTACT**, or by writing to the person named in the section titled **ADDRESSES.** Copies of these documents also are available for public inspection and review during normal business hours at the office listed under **ADDRESSES.**

We specifically request information, views, and opinions from the public on the proposed Federal action of issuing a permit, including the identification of any aspects of the human environment not already analyzed in our EAS. Further, we specifically solicit information regarding the adequacy of the proposed HCP as measured against our permit issuance criteria found in 50 CRF 13.21, 17.22, and 17.32.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their identity from the administrative record. We will honor such requests to the extent allowed by law. If you wish to withhold your identity (e.g., individual name, home address and home phone number), you must state this prominently at the beginning of your comments. We will make all submissions from organizations, agencies or businesses, and from individuals identifying themselves as representatives of officials of such entities, available for public inspection in their entirety.

Background

Section 9 of the ESA and its implementing Federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). The term ''take'' means to harass harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize ''incidental take'' of listed fish and wildlife species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32, respectively.

The applicant has applied to the Service for a 5-year incidental take permit for the endangered Stephen's kangaroo rat (*Dipodomys stephensi*) (covered species, ''SKR''), pursuant to section 10(a)(1)(B) of the ESA. The activities proposed to be covered by the permit include groundwater and soil contaminants investigation activities at the Potrero Creek and Laborde Canyon sites. Investigation activities include: (1) Conducting groundwater level measurements and sampling at existing and future wells; (2) installing up to 50 additional 4-inch diameter groundwater wells for sampling and monitoring; (3) abandoning approximately 20 groundwater production and monitoring wells; (4) maintaining existing structures and groundwater pump and treat system on a daily basis; (5) drilling approximately 400 soil assessment bore holes (8-inch diameter) to sample soil contaminants; (6) installing and sampling up to 200 temporary soil gas probes; (7) conducting unexploded ordnance surveys; (8) conducting seismic reflection and/or refraction surveys; (9) maintaining roads (*e.g.*, repair, limited grading, widening and create new routes if necessary); and (10) removing an old CatOx unit. In addition, measures to minimize and mitigate effects of the above activities to the covered species, are proposed to be covered by the permit.

Incidental take of covered species may occur as a result of these proposed covered activities. The applicant proposes to avoid, minimize, and mitigate the impacts of the taking of this species by implementing the following measures: (1) Completing activities during daylight hours; (2) monitoring all activities by a permitted SKR biologist; (3) flagging burrows and guiding equipment by a biologist to avoid burrows as much as possible; (4) placing load-spreading measures over burrows that can not be avoided; (5) restricting parking of vehicles overnight to existing roads; (6) restricting drilling to the maximum extent possible, to 15 feet or more from burrows; and, if needed, (7) excluding SKR from, or trapping and moving SKR out of, densely occupied areas. Proposed mitigation would consist of refilling bore holes and smoothing of soils disturbed during investigation activities.

Our EAS considers the direct, indirect, and cumulative effects of the proposed action of permit issuance, including the measures that would be implemented to minimize and mitigate such impacts. The EAS contains an analysis of three alternatives: (1) The No Action Alternative (no permit issuance and no investigation activities); (2) the Proposed Action Alternative (groundwater and soil contaminants investigation activities at the Potrero Creek and Laborde Canyon sites with issuance of the permit and implementation of the HCP); and (3) the Soil Assessment by Trenching Alternative (collection of soil samples by trenching instead of drilling for the soil assessment portion of the project). Under the No Action Alternative, no permit would be issued and no investigative activities would occur. Under the Proposed Action Alternative, drilling of bore holes would be utilized to collect soil samples for assessment. Under the Trenching Alternative, trenching would be utilized, instead of drilling, to collect soil samples for assessment. It was determined that trenching would result in greater impacts to biological resources at the sites than drilling.

The Service has made a preliminary determination that approval of the proposed HCP qualifies for a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) and that the proposed HCP qualifies as a ''low-effect'' plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of whether an HCP is low-effect is are based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts (positive or negative) of the proposed HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result in cumulative effects to environmental values or resources that would be considered significant over time.

Based on this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the ESA and the regulations of NEPA (40 CFR 1505.6). We will evaluate the permit application, the proposed HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA. If the requirements are met, we will issue a permit to the applicant.

Dated: July 15, 2005.

Kenneth McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 05–14374 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Technical Agency Draft Recovery Plan for the Endangered Vermilion Darter for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of documents availability and opening of public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the technical agency draft recovery plan for the vermilion darter (*Etheostoma chermocki*). The vermilion darter is found only in Turkey Creek, a tributary of the Locust Fork of the Black Warrior River, Jefferson County, Alabama. The species is threatened by degradation of water quality and substrate components of its habitat due to sedimentation and other pollutants. The technical agency draft recovery plan includes specific recovery objectives and criteria to be met in order to delist the vermilion darter under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1533 *et seq.*). We solicit review and comment on this technical agency draft recovery plan from local, State, and Federal agencies, and the public.

DATES: In order to be considered, we must receive comments on the technical agency draft recovery plan on or before September 19, 2005.

ADDRESSES: If you wish to review this technical agency draft recovery plan, you may obtain a copy by contacting the Jackson, Mississippi Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213 (telephone (601) 965–4900), or by visiting our recovery plan Web site at *http://endangered.fws.gov/recovery/index.html#plans.* If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and materials to the Field Supervisor, at the above address.

2. You may hand-deliver written comments to our Jackson, Mississippi Field Office, at the above address, or fax your comments to (601) 965–4340.

3. You may send comments by e-mail to *daniel_drennen@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' seciton.

Comments and materials received are available for public inspection on request, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel J. Drennen at the above address (telephone (601) 321–1127).

SUPPLEMENTARY INFORMATION:

Background

We listed the vermilion darter (*Etheostoma chermocki* (Teleostei: Percidae)) as endangered under the Act on November 28, 2001 (66 FR 59367). The vermilion darter was officially described in 1992 from Turkey Creek, which is a tributary of the Locust Fork of the Black Warrior River, Jefferson County, Alabama.

The vermilion darter is a medium-sized darter that is only known from a 11.6-kilometer (7.2-mile) section of the Turkey Creek drainage. The greatest threat to this species is degradation of water quality and substrate components of its habitat due to sedimentation and other pollutants (both point and non-point sources). Urbanization has contributed significantly to sedimentation within the Turkey Creek watershed.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The objective of this technical agency draft recovery plan is to provide a framework for the recovery of the vermilion darter so that protection under the Act is no longer necessary. The status of the species will be reviewed, and the species will be considered for removal from the Federal List of Endangered and Threatened Wildlife and Plants (50 CFR part 17) when recovery criteria are met.

Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to final approval of the draft recovery plan.

Please submit electronic comments as an ASCII file format and avoid the use of special characters and encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Mississippi Field Office (see **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 15, 2005.

Jacquelyn Parrish,

Acting Regional Director.

[FR Doc. 05–14372 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Hillcrest Travel Plaza in Fresno County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: The Hillcrest Travel Plaza (applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service is considering the issuance of a 10-year permit to the applicant that would authorize take of the endangered San Joaquin kit fox *(Vulpes macrotis mutica)* incidental to otherwise lawful activities. Such take would occur during the construction and operation of the applicant's proposed travel plaza in Fresno County, California. Construction of the proposed travel plaza would result in the loss of up to 9.27 acres of foraging and migration habitat for the San Joaquin kit fox.

We request comments from the public on the permit application and an Environmental Assessment, both of which are available for review. The permit application includes the proposed Habitat Conservation Plan (Plan) and an accompanying Implementing Agreement. The Plan describes the proposed project and the measures that the applicant would undertake to minimize and mitigate take of the San Joaquin kit fox.

DATES: We must receive your written comments on or before September 19, 2005.

ADDRESSES: Please address written comments to Lori Rinek, Chief, Conservation Planning and Recovery Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. You also may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Jesse Wild, Fish and Wildlife Biologist, or Lori Rinek, Chief, Conservation Planning and Recovery Division, Sacramento Fish and Wildlife Office, at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the individuals named above [see **FOR FURTHER INFORMATION CONTACT**.] Documents also will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office [see **ADDRESSES**.]

Background

Section 9 of the Act and Federal regulations prohibit the take of fish and wildlife species listed as endangered or threatened (16 U.S.C. 1538). Take of federally listed fish and wildlife is defined under the Act to include the following activities: harass, harm, pursue, hunt, shoot, would, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). The Service may, under limited circumstances, issue permits to authorize incidental take (*i.e.*, take that is incidental to, and not for the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for endangered species are found in 50 CFR 17.22.

The applicant proposes to construct and operate a travel plaza and freeway rest stop on a portion of a 38-acre parcel on the southwest side of the intersection of State Route 269 and Interstate 5 near the town of Avenal in Fresno County, California. The construction of the proposed plaza would result in the loss of 9.27 acres of suitable foraging and migration habitat for the San Joaquin kit fox.

Although no San Joaquin kit foxes were observed, or evidence found of their denning, at the time of biological surveys, they may range through and periodically use the site for foraging and/or denning. The construction and operation of the facilities is unlikely to result in direct mortality or injury of San Joaquin kit foxes, but may result in take in the form of harassment.

The applicant proposes to implement specific on-site measures to avoid and minimize take and associated adverse project impacts to San Joaquin kit fox. The applicant also proposes to mitigate for take by purchasing 9.27 acres of compensation credits at the Wildlands, Inc., Kreyenhagen Hills Conservation Bank, in Fresno County. These lands are occupied by the San Joaquin kit fox. The compensation includes funds supporting a management endowment to ensure the permanent management and monitoring of sensitive species and habitats within the area protected by the Conservation Bank.

The Service's Environmental Assessment considers the environmental consequences of three alternatives. The Proposed Project Alternative (described above) consists of the issuance of the incidental take permit and implementation of the Plan and Implementing Agreement for the applicant's proposed project. The No Action Alternative consists of no permit issuance and no construction of the travel plaza at this time. Compared to the proposed project, the No Action Alternative would result in no take in an important migration corridor area, but less long-term conservation for the San Joaquin kit fox within Fresno County, and the applicant would not be able to develop the property. Under the 38-Acre Development Alternative, the entire project site would be developed with permanent structures, parking and access areas, and appurtenances. The project would result in the loss of 38 acres of San Joaquin kit fox foraging and migration habitat, and the applicant would purchase 38 acres of off-site preservation habitat in a conservation bank. Compared to the proposed project, the 38-Acre Development Alternative would result in greater loss of habitat in an important migration corridor area, but more long-term conservation for the San Joaquin kit fox. This alternative would be more costly to the applicant than the proposed project.

This notice is provided pursuant to section 10(a) of the Act and the regulations of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the San Joaquin kit fox. We will make our final permit decision no sooner than 60 days from the date of this notice.

Dated: July 15, 2005.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 05–14373 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Bison and Elk Management Plan and Environmental Impact Statement

AGENCY: Fish and Wildlife Service, National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service and the National Park Service, U.S. Department of the Interior (DOI), as lead agencies, announce that the Draft Bison and Elk Management Plan (Plan) and Environmental Impact Statement (EIS) for the National Elk Refuge and Grand Teton National Park/John D. Rockefeller, Jr. Memorial Parkway (Grand Teton National Park) is available. This draft Plan/EIS was prepared pursuant to the National Wildlife Refuge System Administration Act (NWRS Improvement Act), as amended; the National Park Service Management Policies 2001; and the National Environmental Policy Act (NEPA). The draft Plan/EIS was prepared in cooperation and partnership with the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS); the U.S. Forest Service; the Bridger-Teton National Forest (BTNF); the Bureau of Land Management (BLM); and the State of Wyoming Game and Fish Department (WGFD). The draft Plan/EIS describes the U.S. Fish and Wildlife Service's and the National Park Service's proposal for management of the Jackson bison and elk populations within their respective jurisdictions for 15 years, beginning at the completion of a Record of Decision (ROD) on the final Plan/EIS. Six alternatives for the management of bison and elk populations in the National Elk Refuge and the Grand Teton National Park are considered in the draft Plan/EIS.

DATES: Written comments must be received at the postal or electronic address listed below on or before September 30, 2005.

ADDRESSES: To provide written comments or to obtain a copy of the draft Plan/EIS, please write to: Jackson Bison and Elk Management Planning Office, P.O. Box 510, Jackson, Wyoming 83001; telephone: 307–733–9212, or e-mail: *bison/elk_planning@fws.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, contact Laurie Shannon, Planning Team Leader, Region 6, 134 Union Boulevard, Lakewood, Colorado 80228, telephone 303–236–4317. In addition, copies of the draft Plan/EIS may be downloaded from the project Web site: *http://bisonandelkplan.fws.gov.*

The draft Plan/EIS will be available for reading at the following main branch libraries: State of Wyoming: Albany County—Laramie; Fremont County—Dubois, Lander, and Riverton; Laramie County—Cheyenne; Lincoln County—Afton; Park County—Cody; Natrona County—Casper; Sheridan County—Sheridan; Sublette County—Pinedale and Big Piney; Sweetwater County—Rock Springs; and Teton County—Jackson and Alta. State of Colorado: Denver and Fort Collins. State of Idaho: Idaho Falls, Rexburg, Swan Valley and Victor. State of Montana: Bozeman, Livingston, Missoula, and Ennis. It will also be available at the following colleges and universities: State of Wyoming: Casper College Library, Casper; Central Wyoming College Library, Riverton; University of Wyoming Library, Laramie; Northwest College Library, Powell; Sheridan College Library, Sheridan; and Western Wyoming College Library, Rock Springs. State of Colorado: Colorado State University Library, Fort Collins. State of Montana: Montana State University Library, Bozeman; and the University of Montana Library, Missoula. State of Idaho: University of Idaho Library, Boise.

The U.S. Fish and Wildlife Service and the National Park Service will hold public hearings on the draft Plan/EIS and encourage interested persons and organizations to attend and provide comments at one of the meetings. The times and places of the meetings will be provided in a Planning Update to be mailed to agencies, organizations, and individuals on the mailing list; in notices in area newspapers; and on the project Web site.

SUPPLEMENTARY INFORMATION:

The National Elk Refuge and Grand Teton National Park are located just north of Jackson, Wyoming. Together with the BTNF, they make up most of the southern half of the Greater Yellowstone Ecosystem. The National Elk Refuge comprises about 24,700 acres, the Grand Teton National Park comprises 309,995 acres, and the John D. Rockefeller Jr. Memorial Parkway is about 23,777 acres. The Jackson bison and elk herds make up one of the largest concentrations of free-ranging ungulates in North America. Currently, these herds total approximately 800 bison and 13,500 elk. The herds migrate across several jurisdictional boundaries, including Grand Teton National Park and southern Yellowstone National Park, BTNF, BLM resource areas, and State and private lands, before they winter in the BTNF and the National Elk Refuge. Due to the wide range of authorities and interests, including management of resident wildlife by the State of Wyoming on most federal lands, the U.S. Fish and Wildlife Service and the National Park Service have used a cooperative approach to management planning involving all of the associated Federal and State agencies and a broad range of organized and private interests.

A management plan (Jackson Bison Herd Long Term Management Plan and Environmental Assessment) was developed by the National Park Service and the U.S. Fish and Wildlife Service, in cooperation with the WGFD and the BTNF, for the Jackson bison herd, and finalized in September 1996. In 1998, a lawsuit was brought by the Fund for Animals (FFA) enjoining most federal management actions proposed in the 1996 plan. The court ruled that the controlled hunting of bison on federal lands, for population control purposes, could not be carried out until additional NEPA compliance was completed for those actions. The court also directed that additional NEPA compliance consider the effects of the supplemental winter-feeding of elk on the Jackson bison population in the National Elk Refuge.

The NWRS Improvement Act of 1997 requires that Comprehensive Conservation Plans be developed for all national wildlife refuges. At the National Elk Refuge, elk management-including supplemental winter-feeding-would make up the most significant activity in the CCP. In order to coordinate the NEPA compliance required for the National Elk Refuge under the NWRS Improvement Act, for the Grand Teton National Park under the National Park Service Management Policies of 2001, and for the FFA lawsuit, and because many management actions for one species affect both species, in 1999, the U.S. Fish and Wildlife Service and the National Park Service proposed this planning process.

Significant issues addressed in the draft Plan/EIS include: Bison and elk populations and their ecology; restoration of habitat and management of other species of wildlife; supplemental winter feeding operations of bison and elk; disease prevalence and transmission; recreational opportunities; cultural opportunities and western traditions and lifestyles; commercial operations; and the local and regional economy.

The U.S. Fish and Wildlife Service and the National Park Service, in cooperation with the WGFD and the other Federal agencies, developed six alternatives for the management of bison and elk. These include: Alternative 1—No Action; Alternative 2—Minimal Management of Habitat and Populations; Support Migration; Alternative 3—Restore Habitat, Support Migration, and Phase Back Supplemental Feeding; Alternative 4—Restore Habitat, Improve Forage, and Phase Back Supplemental Feeding; Alternative 5—Restore Habitat, Improve Forage and Continue Supplemental Feeding; and Alternative 6—Restore Habitat, Adaptively Manage Populations, and Phase Out Supplemental Feeding.

Alternative 4, the proposed action, strives to balance the major issues and stakeholder perspectives, identified during prescoping and public scoping, with the purposes, missions, and management policies of the U.S. Fish and Wildlife Service and the National Park Service. Assuming that the WGFD's herd objective of 11,029 had been met, and that higher numbers of elk would use the winter range, approximately 4,000–5,000 elk and up to 500 bison would winter in the National Elk Refuge, and 1,300–1,600 elk would summer in the Grand Teton National Park. The elk hunt in the National Elk Refuge, and the herd reductions in the Grand Teton National Park would continue. A bison hunt would be instituted in the National Elk Refuge. Supplemental feeding would take place only in above-average winters (estimated to occur in roughly 5 out of 10 years). The potential for disease outbreaks would be somewhat reduced, and WGFD personnel would be permitted to use Strain 19 to vaccinate elk.

After the review and comment period for this draft Plan/EIS, all comments will be analyzed and considered by the lead agencies. A final Plan/EIS will be prepared and published, and will include the substantive comments received and the lead agencies' responses to those comments. Changes made to the proposed action will also be identified in the final Plan/EIS. A ROD and final management plan will then be published.

All comments received from individuals on environmental impact statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Privacy Act, the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)), and other policies and procedures of the lead agencies and DOI.

Reviewers should provide their comments during the review period of the draft Plan/EIS. This enables the lead agencies to analyze and respond to the comments at one time and to use information acquired in the preparation of the final Plan/EIS, thus avoiding undue delay in the decision making process. Comments on the draft EIS should be specific and should address the adequacy of the plan, the impact statement, and the merits of the alternatives discussed (40 CFR 1503.3).

In the final Plan/EIS, the U.S. Fish and Wildlife Service will respond to all substantive comments. Comments are considered substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document.
- Question, with reasonable basis, the adequacy of the environmental analysis.
- Present reasonable alternatives other than those presented in the EIS.
- Cause changes or revisions to the Bison and Elk Management Plan.
- Provide new or additional information relevant to the analysis.

Dated: July 13, 2005.

Ralph O. Morgenweck,

Regional Director, Region 6, Denver, CO.

[FR Doc. 05–14226 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on a Proposed New Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request for a new information collection described below will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments on the proposal should be made within 60 days to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the USGS solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Community Survey of Rappahannock River Residents

OMB Approval No: New collection

Summary: This information collection is in support of development of a Comprehensive Conservation Plan for Rappahannock National Wildlife Refuge. Under the National Wildlife Refuge System Improvement Act of 1997, all national wildlife refuges are required to develop a Comprehensive Conservation Plan (CCP). A CCP is a document that provides a framework for guiding refuge management decisions. This planning process ensures the opportunity for active public involvement in the preparation and revision of comprehensive conservation plans. This information collection will inform the planning process by providing information to the U.S. Fish and Wildlife Service on the attitudes and opinions of local residents regarding Rappahannock National Wildlife Refuge and its management.

Estimated Completion Time: 20 minutes.

Estimated Annual Number of Respondents: 1,000.

Frequency: One time.

Estimated Annual Burden Hours: 333 hours.

Affected Public: Residents adjacent to the Rappahannock River Basin, Virginia.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the survey, contact the Bureau clearance office, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Dated: July 14, 2005.

Susan D. Haseltine,

Associate Director for Biology

[FR Doc. 05–14317 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–05–1220]

Notice of Extension of Emergency Closure of Public Lands to Recreational Shooting on Public Lands Administered by the Bureau of Land Management (BLM), Palm Springs-South Coast Field Office, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The BLM Palm Springs-South Coast Field Office is extending an emergency closure order which closes portions of public lands to recreational shooting in the South Coast Planning Area, in San Diego County, California [69 FR 65448, November 12, 2004]. The extension of the emergency closure is needed to continue providing public safety from the stray and ricocheting bullets produced by recreational shooting in this area.

DATES: This extended emergency closure will be in effect immediately and remain in effect through March 31, 2006.

ADDRESSES: Copies of the extended closure notice and a map of the closed area can be obtained at the BLM, Palm Springs-South Coast Field Office, 690 West Garnet Avenue, North Palm Springs, CA 92258, telephone (760) 251–4800/ BLM, California State Office, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825, telephone (916) 978–4600. BLM will also announce the extension of the closure through local media outlets, and by posting a notice with a map of the closed area at the primary access points into the closure.

FOR FURTHER INFORMATION CONTACT: Janaye Byergo, Bureau of Land Management, phone (858) 451–1767 or by e-mail at *Janaye_Byergo@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: This order effects public lands in San Diego County, California, thus described:

San Bernardino Meridian

T. 9 S., R. 1 E.
Section 2, NW¼NW¼, SW¼NW¼, NW¼SW¼, NE¼SW¼, SE¼SW¼
T. 9 S., R. 1 E.
Section 11, NE¼
T. 9 S., R. 1 E.
Section 12, W½NW¼

Authority: This closure notice is issued under the authority of the 43 CFR 8364.1.

Violations of this closure are punishable by a fine not to exceed $1,000 or imprisonment not to exceed 12 months.

Persons who are administratively exempt from the closure contained in this notice include: Any Federal, State or local officer or employee acting within the scope of their duties, members of any organized rescue or fire-fighting force in the performance of an official duty, and any person holding written authorization from the BLM.

Gail Acheson,

Field Manager, Palm Springs-South Coast Field Office.

[FR Doc. 05–14315 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1110–JM–H2KO; HAG–05–0096]

Notice of Intent To Prepare an Environmental Impact Statement for the North Steens Ecosystem Restoration Project

AGENCY: Bureau of Land Management, Burns District, Andrews Resource Area, Interior.

ACTION: Notice of Intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Federal Land Policy and Management Act of 1976, and the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act), the Bureau of Land Management (BLM) is initiating preparation of an Environmental Impact Statement (EIS) to analyze and undertake the North Steens Ecosystem Restoration Project (North Steens Project).

DATES: Scoping comments will be accepted for 15 days following publication of this notice. The North Steens Project was initially proposed for a smaller geographic area; however, initial scoping with private landowners and interested publics expanded the scope to its current landscape scale. Comments received during this scoping extension will be added to those received during previous scoping (January 5 to February 22, 2005). The results of all scoping will be used as BLM prepares the Draft EIS. Public notice will be provided when the Draft EIS becomes available later this year.

FOR FURTHER INFORMATION CONTACT: For further information or to have your name added to our mailing list, contact North Steens Project EIS Lead, Bureau of Land Management, Burns District Office, 28910, Highway 20 West, Hines, Oregon 97738; (541) 573–4543; fax (541) 573–4411; or e-mail (*ORNSEIS@blm.gov*). Documents pertinent to this project may be examined at the Burns District Office in Hines, Oregon, during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The North Steens Project is a landscape-level project proposing to utilize a combination of western juniper treatments (mechanical and non-mechanical methods) and wildland (prescribed and natural) fire to treat fuels and to restore habitat. Implementation of the project would reduce the increased influence of western juniper in mountain big sagebrush, low sagebrush, quaking aspen, mountain mahogany, old growth juniper (over 120 years old), and riparian plant communities. The proposed project area lies within the Andrews Resource Area and the Steens Mountain Cooperative Management and Protection Area (CMPA), designated October 30, 2000 by Act of Congress. The project is located in Harney County, Oregon, and affects approximately 336,000 acres of public and private land.

Section 113(c) of the Steens Act states: ''The Secretary shall emphasize the restoration of the historic fire regime in the Cooperative Management and Protection Area and the resulting native vegetation communities through active management of western juniper on a landscape level. Management measures shall include the use of natural and prescribed burning.''

Management actions to be analyzed will include the following: Seeding of native species, reduction of western juniper (less than 120 yrs old), fencing, and management of wildland fire. Preliminary issues and management concerns were identified by BLM personnel and through the results of initial public scoping. Major issues to be addressed in the EIS include management of woodlands, vegetation, the Steens Mountain Wilderness area, Wilderness Study Areas, Wild and Scenic Rivers, wildlife habitat, special status species, fire/fuels, recreation, cultural resources, noxious weeds, water quality/aquatic resources/ fisheries, and social and economic values. The EIS will also consider American Indian traditional practices.

An interdisciplinary approach will be used to develop the EIS in order to consider the variety of resource issues and concerns identified. Disciplines involved in the project will include (but not be limited to) those with expertise in management of the aforementioned resources.

Public Participation

Cooperating agencies having specific expertise or interests in the project will be invited to participate. The public and interest groups will have every opportunity to participate during formal comment periods and Steens Mountain Advisory Council (SMAC) meetings. The SMAC is an advisory group for actions affecting the CMPA, including this project. Every SMAC meeting provides an opportunity for public comments. In addition, public meetings will be held during the public comment period for the Draft EIS. Public meetings will be held in Burns, Oregon, and at other communities if the level of interest warrants. Early participation is encouraged and will help determine the future management of the North Steens Project area. Meetings and comment deadlines will be announced through the local news media and the Burns BLM Web site (*http://www.or.blm.gov/Burns/*). Written comments will be accepted throughout the planning process at the address above. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Background Information

Prior to 1870, western juniper was limited generally to rocky ridgetops or shallow soil areas with sparse vegetation. Changes in the historic trends are readily apparent within the CMPA. Historically, virtually all plant communities in the Burns District were subjected to wildland fire occurring on a variety of frequencies. The resulting mosaic of plant communities enhanced the success and diversity of animal species and contributed to the ecological integrity of the entire region. In fire-dependent ecosystems, occasional fire is essential to the health and function of the natural system. The loss of natural disturbance events or at least the modification of those events in this area has greatly modified specific habitats affecting the sensitive species living within them.

Dated: April 28, 2005.

Dana R. Shuford,

Burns District Manager.

Editorial Note:

This document was received in the Office of the Federal Register on July 15, 2005.

[FR Doc. 05–14312 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–05–0777–XX]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Meeting dates are September 22–23, 2005, at the Holiday Inn Express, 1100 California NE, Socorro, New Mexico. An optional field trip is planned for September 21, 2005. The public comment period is scheduled for September 21, 2005, from 6–7 p.m. at the Holiday Inn Express. The public may present written comments to the RAC. Depending on the number of individuals wishing to comment and time available, oral comments may be limited. The three established RAC working groups may have a late afternoon or an evening meeting on Thursday, September 22, 2005.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All Meetings are open to the public. At this Meeting, topics include issues on renewable and nonrenewable resources.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P. O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: July 14, 2005.

Linda S.C. Rundell,

State Director.

[FR Doc. 05–14381 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

[MT–922–04–1310–FI–P; (NDM 89629)]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NDM 89629

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), the lessee, NPC, Inc., timely filed a petition for reinstatement of oil and gas lease NDM 89629, Billings County, North Dakota. NPC, Inc. paid the required rental accruing from the date of termination, February 1, 2005.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate. The lessee paid the $500 administration fee for the reinstatement of the lease and $155 cost for publishing this notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate; and
- The $155 cost of publishing this Notice

FOR FURTHER INFORMATION CONTACT: Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, (406) 896–5098.

Dated: June 23, 2005.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. 05–14313 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1430–ES; WYW–134092]

Recreation and Public Purposes (R&PP) Act Classification, Sweetwater County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act, approximately 5 acres of public lands in Sweetwater County, Wyoming. The Ten Mile Water and Sewer District proposes to use the land for office and warehouse space for the District.

DATES: Interested persons may submit written comments to the BLM at the address stated below. Comments must be received by not later than September 6, 2005.

ADDRESSES: Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Patricia Hamilton, Realty Specialist, at the above address or at (307) 352–0334.

SUPPLEMENTARY INFORMATION: The following described public land in Sweetwater County, Wyoming, has been examined and found suitable for classification for lease and/or conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 8890 *et seq.*) and is hereby classified accordingly:

Sixth Meridian, Wyoming

T. 20 N., R. 105 W.
Sec. 20, SW¼SE¼
The land described contains 5.00 acres.

In accordance with the R&PP Act, the Ten-Mile Water and Sewer District has filed a R&PP Act petition/application and plan of development in which it is proposed to use the above described public lands for office and warehouse space needed by the District. The lands are not needed for Federal purposes. Lease or conveyance pursuant to the R&PP Act is consistent with the Green River Resource Area Management Plan, dated August 8, 1987, and would be in the public interest. The lease/conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations, policy and including but not limited to the regulations stated in 43 CFR part 2740, guidance of the Secretary of the Interior.

2. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

3. All minerals shall be reserved to the United States, together with the right to prospect for mine, and remove the minerals under applicable laws and regulations established by the Secretary of the Interior.

4. Provided, that the land conveyed shall revert to the United States upon a finding, and after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance. No portion of the land shall under any circumstance revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

5. If, at any time, the patentee validly transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and the plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

6. All valid existing rights of record, including those documented on the official public land records at the time of lease/patent issuance.

Detailed information concerning the proposed action, including but not limited to documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the BLM, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901, telephone: (307) 352–0334.

On July 21, 2005, the above described lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the lands to the Field Manager, Rock Springs Field Office, at the address stated above in this notice for that purpose. Comments must be received by not later than September 6, 2005.

Classification Comments: Interested parties may submit comments involving the suitability of the land for an office building and warehouse facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision; or any other factor not directly related to the suitability of the land for an office building and warehouse.

Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days after July 21, 2005.

(Authority: 43 CFR 2741.5)

Dated: June 23, 2005.

Michael R. Holbert,

Field Manager.

[FR Doc. 05–14314 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Notification To Terminate the Benefits of the Royalty Rate Reductions Granted Under the Stripper Well Royalty Reduction Program and Request for Comment

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM) is providing the six-month notification to terminate all royalty rate reductions for stripper well properties under the regulations at 43 CFR 3103.4–2(b)(4). In addition, BLM is requesting comments on the financial conditions under which BLM would reestablish the benefit.

DATES: This termination of benefits for stripper well properties is effective for sales on or after February 1, 2006. Send your comments to reach BLM on or before August 22, 2005. The BLM will not necessarily consider comments received after the above date.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

Personal or messenger delivery: 1620 L Street, NW., Suite 401, Washington, DC 20036.

Direct Internet: *http://www.blm.gov.nhp/news/regulatory/index.html.*

Internet E-mail: *Comments_Washington@blm.gov.*

Federal eRulemaking Portal: *http://www/regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rudy Baier, Bureau of Land Management, (202) 452–5024 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week, except holidays, for assistance in reaching Mr. Baier.

SUPPLEMENTARY INFORMATION: Under 43 CFR 3103.4–2(b)(4), BLM may terminate the benefits under the stripper well royalty reduction program upon 6 month's notice in the **Federal Register** when BLM determines that the average oil price has remained above $28 per barrel over a period of 6 consecutive months (based on the WTI Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year). The adjusted threshold for the third quarter of calendar year 2004 was $35.97 and for the fourth quarter $36.16.

Based on BLM analysis, the WTI Crude average oil prices exceeded the adjusted threshold during the last 6 months. Therefore, as authorized by 43 CFR 3103.4–2, this serves as notice that BLM will terminate the benefits of the stripper well royalty reduction program effective for sales on or after February 1, 2006. Therefore, beginning on the effective date, those properties currently receiving relief under section 3103.4–2 must pay royalty in accordance with the royalty rate in the lease or other BLM-approved royalty rate reductions.

Inherent in our authority to terminate the benefits of the royalty reduction program for stripper wells at a price threshold is the authority to reinstate the program should prices later fall beneath such a threshold. In the event that the new stripper royalty reduction regulations are not in effect when prices again make production uneconomic, BLM proposes to reinstate the availability of benefits under the royalty reduction program for stripper wells after publication of notice in the **Federal Register**.

It is BLM's intention to propose new regulations to address situations in which prices again make marginal production uneconomic. In the time between when the benefits of the program terminate and when the new regulations are effective, BLM may reinstate the existing program.

BLM proposes to reinstate the availability of benefits when it determines that the average oil price has remained below $28 per barrel over a period of 6 consecutive months (based on the WTI Crude average posted prices and adjusted for inflation using the implicit price deflator for gross national product with 1991 as the base year).

BLM recognizes that the $28 per barrel trigger was instituted over 12 years ago and conditions since that time may have changed considerably. Therefore, BLM is requesting comment specifically on the financial conditions under which BLM would reestablish the benefit under the existing stripper well royalty reduction program. Please see the **ADDRESSES** section above for information on where to submit your comments.

Dated: May 13, 2005.

J.O. Ratcliff,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 05–14100 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement\General Management Plan, Minidoka Internment National Monument, Jerome County, ID; Notice of Availability

SUMMARY: Pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior, has prepared a draft general management plan (GMP) and environmental impact statement (DEIS) for Minidoka Internment National Monument located in Jerome County, Idaho. In addition to a ''no-action'' alternative (which would maintain current management), the DEIS describes and analyzes three ''action'' alternatives which respond to the concerns and issues of the public identified during the extensive scoping process, as well as conservation planning requirements. These alternatives present varying management strategies for resource protection and preservation, education and interpretation, visitor use and facilities, land protection and boundaries, and long-term operations and management of the national monument. The potential environmental consequences of all the alternatives, and mitigation strategies, are identified and analyzed; a determination as to the ''environmentally preferred'' alternative is also provided in the DEIS.

Scoping: A Notice of Intent announcing preparation of the DEIS and general management plan was published in the **Federal Register** on April 24, 2002. Extensive public involvement was deemed necessary for the success of this planning project, given the nature and sensitivity of the national monument's history, the speed in which the national monument was established, as well as the national monument's remote location. Public engagement and information measures have included public meetings and workshops, presentations and meetings with interested stakeholders, briefings with the Congressional delegation and State and Jerome county officials, newsletter mailings, local and regional and press releases, and Web site postings.

Preceding the formal GMP planning process, National Park Service (NPS) staff conducted informational meetings about the national monument with Japanese American organizations, community organizations, various governmental entities, potential stakeholder groups, and individuals during the spring, summer and early fall of 2002. Approximately 50 meetings were held in Idaho, Washington, Oregon, and Alaska during this time, and approximately 2,000 people were contacted. The purpose of these initial meetings was to help characterize the scale and extent of the planning process.

Thus far the NPS has encouraged the public to provide relevant information, issues and concerns during two formal public planning stages. The first stage, called Scoping, was intended to elicit issues, concerns, and suggestions to be addressed during the planning process. Nine public workshops were held in Idaho, Washington, and Oregon in November 2002; per **Federal Register** announcement dated November 19, 2002 the scoping period was extended an additional 30 days through December 31, 2002. Overall 250 people provided comments in workshops, and another 225 people provided written comments. The second stage, called Draft Alternatives, was intended to present the public with preliminary draft alternatives and invite comments on these alternatives. These draft alternatives were developed to address the specific issues and concerns that were raised by the public during the Scoping phase. Eleven public workshops were held in Idaho, Washington, and Oregon in July and August 2003 (215 people provided oral comments in the workshops, and another 50 people provided written comments).

Proposed Plan and Alternatives: Alternative A is the ''no-action'' alternative and would continue current management practices. This alternative would provide general management guidance for incremental and minimal changes in park operations, staffing, visitor services, and facilities to accommodate visitors. While the historic resources of the site would continue to be protected, only minor additional site work would be anticipated under this alternative. The ''no-action'' alternative is the baseline for evaluating the changes and impacts of the three ''action'' alternatives.

Alternative B emphasizes the development and extensive use of outreach and partnerships to assist the national monument staff in telling the Minidoka story to the American people. Off-site visitor education and interpretation would be conducted through diverse comprehensive programs developed in cooperation with partners, including school districts, museums, and educational and legacy organizations and institutions. Alternative B would focus on identifying off-site facilities for education and interpretation with minimal new development at the national monument site. Historic structures within the national monument would be adaptively reused for visitor and monument functions and for minimal administrative and operational needs. Key historic features would be delineated, restored, or rehabilitated. On-site education and interpretation would be accomplished through a range of self-exploratory visitor experiences.

Alternative C, the ''agency preferred'' alternative, emphasizes on-site education and interpretation and the extensive treatment and use of cultural resources in telling the Minidoka story. On-site education and interpretation would be accomplished through a wide range of visitor experiences, including immersion into the historic scene, interaction with a variety of educational and interpretive media and personal services, and participation in creative and self-directed activities. Off-site visitor education and interpretation would be conducted through diverse programs developed in cooperation with partners, including school districts, museums, and educational and legacy organizations and institutions. Various preservation techniques would be used to protect and enhance historic resources, such as delineation, stabilization, restoration, rehabilitation, and reconstruction. These historic resources would be used for interpretive purposes to accurately and authentically convey the history and significance of the national monument. The establishment of one complete residential block in its original location and configuration would be the cornerstone of interpretive services and facilities at the national monument, essential for understanding and appreciation of the incarceration experience and the significance of the national monument. A visitor contact facility and maintenance area would be developed at the national monument by adaptively reusing existing historic buildings. There would be minimal new development.

The preferred alternative would require congressional legislation to authorize a boundary expansion to include areas where barracks historically stood in order to reestablish a complete residential block. Additionally, the NPS would request congressional legislation to transfer the Minidoka Relocation Center landfill, located one mile north of the national monument, from the BLM to the NPS. Finally, changing the name to Minidoka National Historic Site would be recommended, to be more reflective of the site's historic value.

Alternative D proposes several actions that would focus on education and interpretation on-site, specifically through the development of new visitor facilities. The 9-acre property would be used to develop new facilities and to provide space for a new national monument visitor center, education and research functions, along with a new memorial and garden. On-site education and interpretation would be accomplished through a wide range of visitor experiences, including interaction with a variety of educational and interpretive media, participation in creative and self-guided activities, and limited access of the historic scene. Visitor education programs, adaptive reuse of historic structures for park use, and the establishment of formal partnerships for education and outreach purposes would complement the new construction. Alternative D would focus on sound cultural resource management through preservation, restoration, rehabilitation, and reconstruction of certain historic features. Several actions would provide for the protection and enhancement of natural and scenic resources. Other actions would establish administrative and operational capabilities in terms of facilities and staffing. Most national monument staff activities would be on-site to manage resources and provide for visitor understanding and appreciation of the national monument. However, some off-site educational programs would complement the on-site programs through partnerships.

Public Review and Comment: The Draft GMP/EIS is now available for public review. Interested persons and organizations wishing to express any new concerns or provide additional information are encouraged to obtain the document by contacting the Superintendent, Minidoka Internment National Monument, P.O. Box 570, Hagerman, Idaho 83332–0570, or via telephone at (208) 837–4793. The draft document may also be reviewed at area libraries, or can be obtained electronically via the monument's planning Web site at *http://parkplanning.nps.gov/miin.* In addition, the NPS will conduct public meetings in Idaho, Washington, and Oregon to facilitate public review and comment on the Draft GMP/EIS. At this time, meetings are intended to be scheduled during the first two weeks of July, 2005. Confirmed details on meeting locations, times, etc will be announced via local and regional news media, will be posted on the monument's planning Web site, or can be obtained by contacting the Superintendent directly. A draft GMP/EIS newsletter will also be distributed widely.

All written comments must be postmarked or transmitted not later than September 19, 2005, and should be submitted to the address noted above (or may also be submitted by e-mail to *MIIN_GMP@nps.gov*). All comments will become part of the public record. If individuals submitting comments request that their name or address be withheld from public disclosure, the request will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations; and anonymous comments may not be considered.

Decision: Following the opportunity to review the DEIS/GMP, all comments received will be carefully considered in preparing the final document. This is anticipated to be completed during fall 2006, and its availability will be similarly announced in the **Federal Register** and via local and regional press media. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation would be the Superintendent, Minidoka Internment National Monument.

Dated: April 15, 2005.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 05–14354 Filed 7–20–05; 8:45 am]

BILLING CODE 4312–DC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Draft General Management Plan and Draft Environmental Impact Statement for the Niobrara National Scenic River, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft general management plan and environmental impact statement (GMP/EIS) for the Niobrara National Scenic River (Scenic River).

DATES: The GMP/EIS will remain available for public review for 60 days following the publishing of the notice of availability in the **Federal Register** by the Environmental Protection Agency. Public meetings will be held in the cities of Omaha, Valentine, Ainsworth, and Lincoln, Nebraska. Meeting places and times will be announced by the local media.

ADDRESSES: Copies of the GMP/EIS are available by request by writing to the superintendent at Niobrara National Scenic River, P.O. Box 591, O'Neill, Nebraska 68763; by telephoning the park office at (402) 336–3970; or by e-mail, *niob_administration@nps.gov.* The document is also available to be picked up in person at the Scenic River's offices in O'Neill and Valentine. Finally, the document can be found on the Internet at the NPS Planning, Environment, and Public Comment (PEPC) Web site at: *http://parkplanning.nps.gov/publicHome.cfm.* This Web site allows the public to review and comment directly on this document.

FOR FURTHER INFORMATION CONTACT: Superintendent, Niobrara National Scenic River, P.O. Box 591, O'Neill, Nebraska 68763.

SUPPLEMENTARY INFORMATION: The Scenic River is an area of the national park system. The Scenic River extends 76 miles in Nebraska between the Borman Bridge southeast of Valentine to the Nebraska Highway 137 bridge north of Newport.

The GMP/EIS describes and analyzes the environmental impacts of the proposed management action and one other action alternative for the future management direction of the park, and the environmental impacts of the boundary alternatives. A no-action management alternative is also evaluated.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may also be circumstances where we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: April 29, 2005.

Ernest Quintana,

Regional Director, Midwest Region.

Editorial Note: This document was received in the Office of the **Federal Register** on July 18, 2005.

[FR Doc. 05–14352 Filed 7–20–05; 8:45 am]

BILLING CODE 4312–BM–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Supplemental Environmental Impact Statement for the Elwha Ecosystem Restoration Implementation Final Environmental Impact Statement Olympic National Park, Clallam County, WA; Notice of Availability

Summary: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and corresponding Council of Environmental Quality implementing regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior and its cooperating agencies have finalized a supplement to the Elwha River Ecosystem Restoration Implementation final environmental impact statement (1996 Implementation EIS). Two dams built in the early 1900s block the Elwha River and substantially limit anadromous fish passage. A 1996 Implementation EIS (second of two EISs that examined how best to restore the Elwha River ecosystem and native anadromous fishery in Olympic National Park) identified dam removal as the preferred option and identified a particular set of actions to remove the dams. The release of sediment from behind the dams would result in sometimes severe impacts to water quality or the reliability of supply to downstream users during the 3–5 year dam removal impact period, which the 1996 Implementation EIS proposed mitigating through a series of specific measures (see below). However, since 1996, when the Record of Decision was signed, new research and changes unrelated to the project have necessitated re-analysis of these measures. The primary purpose of this supplemental EIS (SEIS) is to analyze the potential impacts of a new set of water quality and supply related mitigation measures.

Background: Elwha Dam was built on the Elwha River in 1911 and Glines Canyon Dam in 1925, limiting anadromous fish to the lowest 4.9 miles of river and blocking access to more than 70 miles of Elwha River mainstem and tributary habitat. The two dams and their associated reservoirs have also inundated and degraded important riverine and terrestrial habitat and severely affected fisheries habitat through increased temperatures, reduced nutrients, the absence of spawning gravels downstream and other changes. Consequently, salmon and steelhead populations in the river have been considerably reduced or eliminated, and the Elwha River ecosystem within Olympic National Park significantly and adversely altered.

In 1992, Congress enacted the Elwha River Ecosystem and Fisheries Restoration Act (Pub. L. 102–495) directing the Secretary of the Interior to fully restore the Elwha River ecosystem and native anadromous fisheries but also protecting municipal and industrial water users from the possible adverse impacts of dam removal. As noted above, the decisions associated with this process indicated removal of both dams was needed to fully restore the ecosystem. Impacts to water quality will result from the release of sediment which has accumulated behind the dams. Impacts to water supply will result from the release of fine sediment (*i.e.*, silts and clays). These sediments can reduce yield by clogging the gravel that overlays subsurface intakes during periods of high turbidities. Increases in flooding or flood stage are also a likely result of dam removal, as sediments would replenish and raise the existing riverbed back to its pre-dam condition.

The 1996 Implementation EIS proposed and analyzed numerous mitigation and flood controll measures to protect quality and ensure supply for each of the downstream users, which included:

• The installation of an infiltration gallery to collect water filtered from the riverbed;

• Open channel treatment of this water for industrial customers;

• Closure of the state chinook rearing channel during and for years following dam removal, with chinook production transferred to another state facility;

• The installation of a second subsurface Ranney collector on the opposite shore to maintain yield during meander away from the existing collector;

• A temporary package treatment plant to filter water from the Ranney wells during dam removal;

• Expansion of the tribal hatchery and of its infiltration gallery and drilling of groundwater wells to facilitate protection and production of Elwha anadromous fish for restoration, and;

• On-site flood protection for the Dry Creek Water Association wellfield, or connection of these users to the Point Angeles water system;

• The development of a mounded septic system on the Lower Elwha Klallam Reservation; and

• Strengthening and extension of the federal levee and other smaller levees and flood control structures.

Continued study by the cooperating agencies since the 1996 Implementation EIS was finalized revealed the potential for unforeseen difficulties with some of the mitigation facilities, and identified different measures from those analyzed to resolve these difficulties. Further refining of the expected flood stage following the restoring of riverbed sediments also showed it would be higher in some areas of the river and lower in others than the original modeling predicted. In addition, changes in user needs resulting from factors unrelated to the project required a new look at some of the mitigation measures. For example, chinook salmon and bull trout have both been listed as threatened since 1997, resulting in the requirement to keep the state rearing facility open during dam removal. Also, the city of Port Angeles must now meet new standards for the treatment of its municipal supplies. In addition, an industrial customer (Rayonier) which required very high quality water for its operation has since closed. The low-lying lands of the Reservation have also been developed to such a degree since 1996 that a small mounded septic system would not be adequate.

Proposal and Alternatives: The 1996 Implementation EIS focused on dam removal and sediment management and analyzed two action alternatives; it was tiered to an earlier programmatic EIS, which examined four options and a ''no action'' alternative for restoring the Elwha River ecosystem. Due to this extensive consideration of the overall project and its alternatives, the SEIS only analyzed the most preferable feasible alternative for mitigating impacts to water quality and supply in some cases. This is true of the facilities that would supply treated water for industrial, hatchery and municipal use. When several options with relatively equal value in protecting users from impacts to water quality or from flooding were available, each was analyzed in the SEIS. These include maintaining water quality for Dry Creek Water Association and Elwha Heights homeowners, upgrading the tribal hatchery, treating tribal wastewater, and providing flood protection mitigation for the tribal and other residents along the river. A discussion of alternatives for industrial, hatchery and municipal use that were not selected for analysis, and rationales for not carrying them further, is provided in the SEIS (Chapt.2) and in the Elwha River Water Quality Mitigation Project Planning Report (available at *http://www.nps.gov/olym/elwha/home.htm*).

As documented in the Draft and Final SEIS, the proposal is deemed to be the ''environmentally preferred'' alternative; and it includes the following:

• The use of surface water rather than a subsurface infiltration gallery and additional Ranney well to supply the city's municipal and industrial customers, the tribal hatchery and the state chinook rearing channel. This change is intended to prevent ''blinding'', which research after 1996 found was likely to occur in any kind of subsurface water collecting facility. Blinding clogs and effectively seals the surface with fine sediment for a period of time, and can substantially reduce water yield.

• Removal of the existing rock dam and intake structure that currently supplies the city's industrial customers, and replacement with a graded fish riffle and weir structure to pass fish (''Elwha Water Surface Intake'' in the SEIS) and pool water. The existing intake will be replaced.

• A sediment removal facility (''Elwha Water Treatment Facility'' in the SEIS) built in the location of the existing industrial treatment channel on the east bank of the river, which will receive water for treatment from the weir and intake described above. This facility will supply industrial customers, and also at times a new water treatment facility during the 3–5 year dam removal impact period.

• A new permanent water treatment facility in Port Angeles (''Port Angeles Water Treatment Facility'' in the SEIS) adjacent to the city's existing landfill area, which will receive water from the sediment removal facility during and for a period of time following dam removal, and subsequently from the city's existing Ranney collector.

• Flood protection of the Dry Creek Water Association's existing wellfield.

• Connecting the Elwha Heights Water Association to the Dry Creek Water Association water delivery system to protect water quality of Elwha Heights water users.

• Relocation of the tribal hatchery to the Halberd parcel on Lower Elwha Klallam Tribal land, with water supplied from the Elwha Water Treatment Plant during the sediment release impact period.

• Keeping the state chinook rearing channel open during dam removal with water from the Elwha Water Treatment Plant during the sediment release impact period and creating a rearing pond on nearby Morse Creek as an additional rearing location for use during dam removal.

• Raising the federal levee an average of 3.3 feet (as compared to 2.5 feet in the 1996 Implementation EIS) and armoring with rock riprap where needed. The federal levee would be extended both north and south to provide additional protection from flooding following dam removal. The northward extension would be 450 feet in length; the southward extension would be a 1,650-foot route south and southeast across the Halberd property. This route includes use (raising and strengthening) of an existing levee haul road. A second levee across the river would also be raised.

• A series of small-scale flood protection measures, such as raising wellheads, dikes, roads or property to protect private citizens and existing facilities (Ranney collector, state WDFW fish-rearing facility, etc.) would be built. Most are similar or identical to those already analyzed in the 1996 Implementation EIS.

• Providing an on-reservation wastewater collection and treatment system to handle wastewater generated on the Lower Elwha Klallam Tribe's reservation.

• Sections removed from Glines Dam would be transported to a private facility to be crushed and recycled if economics indicate this would be advantageous. If not, concrete would be disposed of in open pit mines and other locations evaluated in the 1996 Implementation EIS.

• A trail, overlook and chemical toilet available to all (including disabled) visitors would be built to observe the removal of Elwha Dam and offer future interpretive opportunities.

• Property and/or conservation easements would be purchased to offset impacts of dam removal to trumpeter swans.

Each of these facilities is funded wholly or in part by the federal government to the extent that they provide mitigation from the effects of dam removal. Additional funding may be provided by homeowners groups or by other interested parties if protection or improvement beyond that resulting directly from dam removal is desired.

The No Action alternative is the same alternative as was discussed in the 1996 Implementation EIS; that is, no dam removal would take place. Because the dams would remain, water and flooding mitigation would not be needed.

Public Response to Draft SEIS: The draft SEIS was released for public review and comment in January 2005. Comments were received until March 15, 2005. The NPS received 8 letters and an Enviromental Protection Agency (EPA) evaluation of LO, or lack of objections (also noticed in the **Federal Register** on April 8, 2005). Commenters included the Washington Department of Ecology, Washington Department of Natural Resources, the Lower Elwha Klallam Tribe, the city of Port Angeles, Dry Creek Water Association, Inc., American Whitewater, Trout Unlimited, and Mr. Russ Busch, Tribal Attorney.

Synopsis of Comments and Changes in Final SEIS: The state agencies primarily reminded the NPS that various permits to begin dam removal would be required. Three individuals from the Tribe submitted requests for changed language reflecting updates since the draft SEIS was released. Because the Tribe and city of Port Angeles have been unable to reach a final agreement on the acceptance of tribal wastewater to the city's treatment facility, a second alternative was added. This alternative would be located on tribal land and would use a membrane bio-reactor technology and constructed wetland to treat wastewater and minimize impact of any effluent. Effluent would be allowed to infiltrate into soil underlying the wetland, or would be released into the Elwha River. This is the preferred alternative, rather than connecting to the city of Port Angeles' wastewater treatment facility. The Tribe has also evaluated two different alignments for extending the federal levee to the south that would better mitigate impacts from flooding at this end of the reservation. These have been added to the text of the final SEIS, although the preferred alternative is one that was analyzed in the draft SEIS. Additional information on fisheries and vegetation issues that have no bearing on the decision of a preferred alternative, but which add to the completeness of the final SEIS, was suggested by the third tribal individual. The city of Port Angeles' comments were wide ranging: some requested additional clarification on measures to mitigate impacts (to industrial users, for example); others mentioned permitting and final clearances that would be required from the city; some asked for additional impact information, such as to Orca whales, socioeconomics, and current traffic conditions; and others debated accuracy of statements in the draft SEIS. Although additional impact information and clarity on mitigation measures has been added where NPS felt it was incomplete or would be helpful, no changes to the preferred alternative were necessitated as a result of the city's comments. Mr. Busch asked for additional information to be added to the description and impacts of the No Action alternative, as well as to the impacts of the preferred alternative. The added information would not affect selection of the preferred alternative or alter it in any way. American Whitewater asked that the safety of the new surface diversion facility (the Elwha Surface Water Intake) be evaluated so that access for recreational uses would be maintained along the entire river, and Trout Unlimited indicated support for several of the features of the preferred alternative. The diversion would be able to pass kayaks and other craft safely, and signs to indicate any hazard areas would be used to direct recreational users.

Distribution of Final SEIS: Those who commented during the review period on the draft SEIS will receive a complete final SEIS document, as will agencies and others on the park mailing list (as noted in chapter 5 of the final SEIS). Others may request a paper copy of the final SEIS, a CD of the final SEIS and/or a CD of the full 1996 Implementation EIS which the subject document supplements. Please specify which of these documents/CDs is desired when contacting the Elwha Project Management Office. Finally, both the final SEIS and 1996 Implementation EIS will be posted on the Elwha project Web site at *http://www.nps.gov/olym/elwha/home.htm.*

Decision Process: Following release of the final SEIS the NPS will wait for a minimum period of at least 30 days from the date this notice is published in the **Federal Register** before making a final decision on which mitigation facilities it will select. Therefore if there are interested persons or organizations wishing to express any remaining concerns or comments on the content of the final SEIS, they should send them in writing to Dr. Brian Winter, Elwha Project Manager, at 826 East Front Street, Ste.A, Port Angeles, WA 98362; telephone inquires may be directed to (360) 565–1320. Faxed or electronic transmittals will be accept also (electronic comments should be sent to *Brian_Winter@nps.gov,* and faxes may be sent to (360) 565–1325). If substantive new information is submitted that both (1) could not have been raised during scoping or the review of the draft SEIS and (2) that has bearing on the selection of the preferred mitigation alternative, the NPS will consider such information.

Respondents are reminded that decisions or facts in the 1996 Implementation EIS are not subject to public review at this time. If any persons or organizations choose to respond, please include name and address (note that names and addresses of commenters become part of the public record). If individuals commenting request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold from the record a respondent's identity, as allowable by law. As always: the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region. Subsequently the official responsible for implementing the selected mitigation alternative is the Superintendent, Olympic National Park.

Dated: June 3, 2005.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 05–14353 Filed 7–20–05; 8:45 am]

BILLING CODE 4312–KY–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan and Environmental Impact Statement, Lincoln Home National Historic Site, Illinois

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the general management plan, Lincoln Home National Historic Site.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service is preparing an environmental impact statement for a general management plan for Lincoln Home National Historic Site (LIHO). The environmental impact statement will be approved by the Director, Midwest Region.

The general management plan will prescribe the resource conditions and visitor experiences that are to be achieved and maintained at LIHO over the next 15 to 20 years. The clarification of what must be achieved according to law and policy will be based on review of the site's purpose, significance, special mandates, and the body of laws and policies directing park management. Based on determinations of desired conditions, the general management plan will outline the kinds of resource management activities, visitor activities, and development that would be appropriate in the future. A range of reasonable management alternatives will be developed through this planning process and will include, at a minimum, no action and the preferred alternative.

Major issues to be addressed in the plan include: Issues surrounding preserving park resources (such as developing management strategies to preserve and maintain historic structures and cultural landscapes and protect archaeological sites in the face of a predicted increase in visitation); issues surrounding visitor understanding, education and appreciation of park resources (such as enhancing and expanding meaningful visitor experiences as alternatives to the LIHO tour); and, issues surrounding organizational effectiveness (such as identifying potential partnerships with the city of Springfield, the Abraham Lincoln Presidential Library and Museum and others).

Dates: Any comments on the scope of issues to be addressed in the EIS should be received no later than November 15. Public meetings regarding the general management plan will be held during the scoping period. Specific dates, times, and locations will be made available in the local media, on the LIHO Web site (*http://www.nps.gov/liho*), on the National Park Service Planning, Environment and Public Comment (PEPC) Web site (*parkplanning.nps.gov/publicHome.cfm*), or by contacting the Superintendent.

ADDRESSES: Information on the planning process and copies of newsletters will be available from the office of the Superintendent, 413 South Eighth Street, Springfield, IL 62701–1905.

FOR FURTHER INFORMATION CONTACT: Acting Superintendent, Lincoln Home National Historic Site, 413 South Eighth Street, Springfield, IL 62701–1905. 217–492–4241.

SUPPLEMENTARY INFORMATION: If you wish to comment on any issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Lincoln Home National Historic Site, 413 South Eighth Street, Springfield, IL 62701–1905. You may also comment via e-mail to *liho_superintendent@nps.gov*. Please submit e-mail comments as a text file avoiding the use of special characters and any form of encryption. Be sure to include your name and return street address in your Internet message. You may provide comments electronically by entering them into the PEPC Web site at the address above. Finally, you may hand-deliver comments to 413 South Eighth Street in Springfield, IL.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 8, 2005.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 05–14355 Filed 7–20–05; 8:45 am]

BILLING CODE 4312–BM–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a Draft Environmental Impact Statement (EIS) for the General Management Plan for Little River Canyon National Preserve, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, National Park Service (NPS) policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decisionmaking), the NPS will prepare an EIS for the General Management Plan (GMP) for Little River Canyon National Preserve. The authority for publishing this notice is contained in 40 CFR 1506.6.

The NPS will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Little River Canyon National Preserve. Suggestions and ideas for managing cultural and natural resource conditions and visitor experiences at the national preserve are encouraged. The comment period for each of these meetings will be announced at the meetings and will be published on the GMP web site for Little River Canyon National Preserve at *http://www.nps.gov/sero/planning/liri_gmp/liri_info.htm.*

DATES: Locations, dates, and times of public scoping meetings will be published in local newspapers and may also be obtained by calling Little River Canyon National Preserve. This information will also be published on the GMP Web site for Little River Canyon National Preserve.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the NPS: Superintendent, Little River Canyon National Preserve, 2141 Gault Avenue North, Fort Payne, Alabama 35967.

FOR FURTHER INFORMATION CONTACT: Superintendent, Little River Canyon National Preserve, (256) 845–9605.

SUPPLEMENTARY INFORMATION: The NPS has announced that an EIS on GMPs will be prepared for all park units. To comply with this policy, a formal scoping period is announced.

Comments are invited on any issue believed to be relevant to the management of Little River Canyon

National Preserve and should be submitted to the Superintendent whose address is given above. Public scoping meetings will be held in the local area and the dates and times may be obtained from local newspapers or by calling Little River Canyon National Preserve. We urge that comments and suggestions be made in writing.

The plan will identify desired future conditions for cultural and natural resources and visitor experiences for various management zones within Little River Canyon National Preserve. Central to these desired future conditions is the determination of the national preserve's mission, purpose, and significance. A draft GMP/EIS will be prepared and presented to the public for review and comment, followed by preparation and availability of the final GMP/EIS.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The responsible official for this EIS is Patricia A. Hooks, Regional Director, Southeast Region, National Park Service, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: May 11, 2005.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. 05–14350 Filed 7–20–05; 8:45 am]

BILLING CODE 4312–KC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, ME, Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, September 12, 2005.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Schooner Club, Schoodic Education and Research Center, Acadia National Park, Winter Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 6, 2005.
2. Committee reports:

—Land Conservation.
—Park Use.
—Science and Education.
—Historic.

3. Old business.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda for next Commission meeting, February 5, 2005.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: June 24, 2005.

Sheridan Steele,

Superintendent.

[FR Doc. 05–14351 Filed 7–20–05; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Charter Renewal

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the California Bay-Delta Public Advisory Committee (Committee). The purpose of the Committee is to provide advice and recommendations to the Secretary on implementation of the CALFED Bay-Delta Program (Program) as described in the Programmatic Record of Decision which outlines the long-term comprehensive solution for addressing the problems affecting the San Francisco Bay-Sacramento-San Joaquin Delta Estuary, Public Law 108–361, and other applicable law. Specific responsibilities of the Committee include: (1) Making recommendations on annual priorities and coordination of Program actions to achieve balanced implementation of the Program elements; (2) providing recommendations on effective integration of Program elements to provide continuous, balanced improvement of each of the Program objectives (ecosystem restoration, water quality, levee system integrity, and water supply reliability); (3) evaluating implementation of Program actions, including assessment of Program area performance; (4) reviewing and making recommendations on Program Plans and Annual Reports describing implementation of Program elements as set forth in the ROD to the Secretary; (5) recommending Program actions taking into account recommendations from the Committee's subcommittees; and (6) liaison between the Committee's subcommittees, the State and Federal agencies, the Secretary, and the Governor.

The Committee consists of 20 to 30 members who are appointed by the Secretary, in consultation with the Governor.

FOR FURTHER INFORMATION CONTACT: Diane Buzzard, CALFED Program Manager, Bureau of Reclamation, 2800 Cottage Way, Sacremento, California 95821–1898, telephone 916–978–5525.

The certification of Charter renewal is published below:

Certification

I hereby certify that Charter renewal of the California Bay-Delta Public Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Gale A. Norton,

Secretary of the Interior.

[FR Doc. 05–14438 Filed 7–20–05; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Second Review)]

Polychloroprene Rubber from Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] [3]

Background

The Commission instituted this review on July 1, 2004 (69 FR 39961) and determined on October 4, 2004 that it would conduct a full review (69 FR 61403, October 18, 2004). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 30, 2004 (69 FR 78474). The hearing was held in Washington, DC, on May 3, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on June 27, 2005. The views of the Commission are contained in USITC Publication 3786 (June 2005), entitled Polychloroprene Rubber from Japan: Investigation No. AA1921–129 (Second Review).

Issued: July 15, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–14325 Filed 7–20–05; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Okun and Commissioner Hillman dissenting.

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Office of Federal Contract Compliance Programs Recordkeeping and Reporting Requirements, Supply and Service. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 19, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *e-mail bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of three equal opportunity programs prohibiting employment discrimination and requiring affirmative action. The OFCCP administers Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 U.S.C. 4212. The regulations implementing the Executive Order program are found at 41 CFR parts 60–1, 60–2, 60–3, 60–4, 60–20, 60–30, 60–40, and 60–50. The regulations implementing Section 503 are published at 41 CFR part 60–741. The regulations implementing VEVRAA are found at 41 CFR part 60–250. The regulations require contractors to develop and maintain Affirmative Action Programs (AAP). OFCCP reviews these AAPs through its compliance evaluation process. The Supply and Service Scheduling Letter provides the contractor notice of its selection for a compliance evaluation and requests the submission of its Affirmative Action Programs and supporting documentation. The supporting documentation includes compensation data (Itemized Listing question number 11). OFCCP uses the Item 11 data purely to determine whether OFCCP should investigate a contractor's compensation practices further, as a means of targeting and allocating the agency's investigative resources. OFCCP is not using Item 11 data to make any kind of determination of whether a violation has occurred. OFCCP only determines that a violation has occurred based on careful investigation of a contractor's compensation practices, which would require examination of much more detailed compensation and personnel data. With respect to assessing whether the contractor has engaged in systemic discrimination (*i.e.*, pattern or practice discrimination under a disparate treatment and/or disparate impact theory), OFCCP conducts multiple regression analyses and/or examines cohorts to assess whether there is a pattern of compensation disparities. In assessing whether to make a finding of systemic compensation discrimination, OFCCP looks not only at statistically-significant compensation disparities, but also at evidence of how the statistical pattern of pay disparities affects individual employees within the contractor's workplace, and other anecdotal evidence. OFCCP has found this approach effective in determining whether systemic compensation discrimination exists, convincing a contractor to conciliate based on OFCCP's findings, and creating a credible threat of enforcement litigation.

In light of this limited use of the Item 11 data, OFCCP concludes that the data, while clearly not sufficient to make a determination of a violation, is and has been effective in allowing OFCCP to allocate the agency's investigative resources.

Further, OFCCP implemented new Active Case Management (ACM) procedures that are used in connection with Desk Audit Reviews and Closures. The goal of ACM is to concentrate agency resources on identifying and remedying cases of systemic discrimination and to quickly and efficiently close out reviews where there are no indicators of systemic discrimination present. Under ACM procedures, only cases producing indicators of potential systemic discrimination (defined as potential affected classes of 10 or more applicants/workers) should proceed beyond the desk audit phase. These ACM procedures limit the amount of burden on Federal contractors to supply additional compensation information during the Desk Audit stage of their review.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* OFCCP seeks a three-year extension to the approval of the Supply and Service Scheduling Letter. There is no change in the substance or method of collection since the last OMB approval. OFCCP revised the burden hour estimates associated with the Supply and Service Scheduling letter based on the responses to a CY 2004 Compensation Questionnaire report submitted to OMB as part of the 2004 Information Collection Request extension.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping and Reporting Requirements, Supply and Service.

OMB Number: 1215–0072.

Affected Public: Business or other for-profit, not-for-profit institutions.

Total Annual responses: 83,462.

Frequency: Annually.

Average Time per response: 110 hours.

Estimated Total Burden Hours: 9,223,921.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $110,607.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 14, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 05–14383 Filed 7–20–05; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Genwal Resources, Inc.

[Docket No. M–2005–046–C]

Genwal Resources, Inc., P.O. Box 1077, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Crandall Canyon Mine (MSHA I.D. No. 42–01715) located in Emery County, Utah. The petitioner requests a modification of the existing standard to permit the use of two portable fire extinguishers, or one extinguisher at each temporary electrical installation, with at least twice the minimum capacity for a portable fire extinguisher in 30 CFR 75.1100–1(e). The petitioner asserts that the proposed alternative method will not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. West Ridge Resources, Inc.

[Docket No. M–2005–047–C]

West Ridge Resources, Inc., P.O. Box 1077, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1100–2(e) (Quantity and location of firefighting equipment) to its West Ridge Mine (MSHA I.D. No. 42–02233) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of two portable fire extinguishers, or one portable fire extinguisher at each temporary electrical installation, with at least twice the minimum capacity for a portable fire extinguisher in 30 CFR 75.1100–1(e). The petitioner asserts that the proposed alternative method will not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Genwal Resources, Inc.

[Docket No. M–2005–048–C]

Genwal Resources, Inc., P.O. Box 1077, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its South Crandall Canyon Mine (MSHA I.D. No. 42–02356) located in Emery County, Utah. The petitioner requests a modification of the existing standard to permit the use of two portable fire extinguishers, or one portable fire extinguisher at each temporary electrical installation, with at least twice the minimum capacity for a portable fire extinguisher in 30 CFR 75.1100–1(e). The petitioner asserts that the proposed alternative method will not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Andalex Resources, Inc.

[Docket No. M–2005–049–C]

Andalex Resources, Inc., P.O. Box 1077, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Pinnacle Mine (MSHA I.D. No. 42–01474) located in Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of two portable fire extinguishers, or one portable fire extinguisher at each temporary electrical installation, with at least twice the minimum capacity for a portable fire extinguisher in 30 CFR 75.1100–1(e). The petitioner asserts that the proposed alternative method will not result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Andalex Resources, Inc.

[Docket No. M–2005–050–C]

Andalex Resources, Inc., P.O. Box 1077, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility) to its Aberdeen Mine (MSHA I.D. No. 42–02028) located in

Carbon County, Utah. The petitioner requests a modification of the existing standard to permit the use of low-voltage or battery-powered non-permissible, electronic testing, diagnostic equipment or other equipment within 150 feet of pillar workings, under controlled conditions. The petitioner asserts that the proposed alternative method will not result in a diminution of safety to the miners and that the proposed alternative method based on provisions in 30 CFR 75.153 would provide at least the same measure of protection as the existing standard.

6. Bear Gap Coal Company

[Docket No. M–2005–051–C]

Bear Gap Coal Company, P.O. Box 64, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (Quantity and location of firefighting equipment) to its #6 Slope Mine (MSHA I.D. No. 36–09296) located in Dauphin County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of portable fire extinguishers only to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10 quart pails is not practical. The petitioner proposes to use two portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Bear Gap Coal Company

[Docket No. M–2005–052–C]

Bear Gap Coal Company, P.O. Box 64, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1400 (Hoisting equipment; general) to its #6 Slope Mine (MSHA I.D. No. 36–09296) located in Dauphin County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices. The petitioner would instead operate its man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device, and use hoisting ropes with a factor of safety in excess of the 4 to 8 to 1 as suggested in the American Standards Specifications for the use of wire ropes in mines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Bear Gap Coal Company

[Docket No. M–2005–053–C]

Bear Gap Coal Company, P.O. Box 64, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.335 (Construction of seals) to its #6 Slope Mine (MSHA I.D. No. 36–09296) located in Dauphin County, Pennsylvania. The petitioner proposes constructing seals from wooden materials of moderate size and weight; designing the seals to withstand a static horizontal pressure in the range of 10 psi; and installing a sampling tube only in the monkey (higher elevation) seal. The petitioner asserts that because of the pitch of anthracite veins, concrete blocks are difficult to use and expose miners to safety hazards during transport. The petitioner cites the low level of explosibility of anthracite coal dust and the minimal potential for either an accumulation of methane in previously mined pitching veins or an ignition source in the gob area as justification for the proposed 10 psi design criterion. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. Black Beauty Coal Company

[Docket No. M–2005–054–C]

Black Beauty Coal Company, 3609 South Hart Street, Vincennes, Indiana 47591 has filed a petition to modify the application of 30 CFR 75.380(d)(5) (Escapeway; bituminous and lignite mines) to its Air Quality #1 Mine (MSHA I.D. No. 12–02010) located in Knox County, Indiana. The petitioner requests a modification of the existing standard to permit the continued use of the existing Escapeway from Unit #1 (1L/MS) number #1 entry at number 56 crosscut to the Main South (number #7 entry number 61 crosscut) intake Escapeway. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: *http://www.regulations.gov;* e-mail: *zzMSHA-Comments@dol.gov;* Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before August 22, 2005. Copies of these petitions are available for inspection at that address.

Dated in Arlington, Virginia this 15th day of July 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 05–14410 Filed 7–20–05; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–116]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted by September 19, 2005.

ADDRESSES: All comments should be addressed to Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street, SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1230, *kathleen.shaeffer-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information developed by the National Aviation Operations Monitoring Service will be used by NASA Aviation Safety Program Managers to evaluate the progress of their efforts to improve aviation over the next decade.

II. Method of Collection

NASA collects this information manually.

III. Data

Title: National Aviation Operations Monitoring Service.

OMB Number: 2700–0099.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 8,000.

Estimated Time per Response: Approximately ½ hour.

Estimated Total Annual Burden Hours: 5,455.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–14300 Filed 7–20–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–117]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All Comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Suite 6M70, Washington, DC 20546 (202) 358–1230, *kathleen.shaeffer-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection to account for Government-owned/contractor-held property. The NASA Form 1018 provides for the annual collection of summary data from these records to ensure the accurate reflection of Agency assets and related depreciation on the financial statements and essential property management information.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700–0017.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 1,110.

Estimated Time per Response: Approximately 1.5 hours.

Estimated Total Annual Burden Hours: 7,900.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–14301 Filed 7–20–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–114]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA, Office of Information and Regulatory Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1230, *kathleen.shaeffer-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection to ensure engineering changes are made quickly and in a cost-effective manner. Proposals supporting such change orders contain detailed information which enables the Government to obtain the best goods and services for the best prices.

NASA procurement and technical personnel use the information to manage the contract. Change proposals are submitted whenever a change order is used which increases the contractor's cost to perform the contract. Without change orders, NASA would often be unable to obtain the best goods and services at the best prices.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: Contract Modifications, NASA FAR Supplement Part 18–43.

OMB Number: 2700–0054.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 88.

Estimated Time per Response: 45.

Estimated Total Annual Burden Hours: 7,425.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–14302 Filed 7–20–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–115]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1230, *kathleen.shaeffer-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection to ensure proper accounting of Federal property provided under grants and cooperative agreements with institutions of higher education and other non-profit organizations, and to satisfy external requirements for internal control of property provided by NASA or acquired with NASA funds.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: NASA Inventory Report: Property Management and Control, Grants.

OMB Number: 2700–0047.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions; State, local or tribal government.

Estimated Number of Respondents: 132.

Estimated Time Per Response: Approximately 10 hours.

Estimated Total Annual Burden Hours: 1,432.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–14303 Filed 7–20–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–111]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB Review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1230, *kathleen.shaeffer-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection to enable contracting officers to determine acceptance of cost reduction proposals, and, if approved, to provide periodic reporting to ensure cost savings are being realized. Collection is prescribed in the NASA Federal Acquisition Regulation Supplement, Subpart 1843.71, Shared Savings, and contract clauses.

The information is used by contracting officers to ensure projected cost savings have merit and are being realized after adoption of shared savings proposals.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: Cost Reduction Proposals Under the NASA FAR Supplement Shared Savings Clause.

OMB Number: 2700–0094.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government.

Estimated Number of Respondents: 4.

Estimated Time Per Response: 45.

Estimated Total Annual Burden Hours: 180.

Estimated Total Annual Cost: $0.

IV. Request of Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–14308 Filed 7–20–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–112]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW, Mail Suite 6M70, Washington, DC 20546, (202) 358–1230, *kathleen.shaeffer-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection to ensure proper accounting of Federal funds and property provided under grants and cooperative agreements with State and local governments.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: Grants and Cooperative Agreements with State and Local Governments.

OMB Number: 2700–0093.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal government.

Estimated Number of Respondents: 78.

Estimated Time Per Response: Approximately 5 hours.

Estimated Total Annual Burden Hours: 2,505.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–14309 Filed 7–20–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 05–113]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathy Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Suite 6M70, Washington, DC 20546, (202) 358–1230, *kathleen.shaeffer-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting renewal of an existing collection to comply with 15 U.S.C. 644(g) and (h) and 48 CFR 19.202–5, which requires agencies to measure the extent of small business participation in their acquisition programs.

II. Method of Collection

NASA collects this information electronically where feasible, but information may also be collected by mail or fax.

III. Data

Title: Small Business and Small Disadvantaged Business Concerns and Related Contract Provisions, NASA FAR Supplement Part 18–19, SF 295.

OMB Number: 2700–0073.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Estimated Number of Respondents: 190.

Estimated Time per Response: 12.

Estimated Total Annual Burden Hours: 4,560.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–14310 Filed 7–20–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–119]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA is contemplating the granting of a partially exclusive license in the United States to practice the inventions described and claimed in U.S. Patent Application Serial No. 10/361,046, entitled ''Motion Sickness Treatment Apparatus and Method,'' to MacNaughton, Inc., having a place of business in Beaverton, OR. The fields of use may be limited to motion sickness applications. The patent rights in the inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted within fifteen (15) days from the date of this published notice, unless NASA receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will be treated as objections to the grant of the contemplated partially exclusive license.

NASA's practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you may state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Theodore Ro, Patent Attorney, NASA Johnson Space Center, Mail Stop AL, Houston, TX 77058–8452; telephone (281) 244–7148.

Dated: July 14, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–14307 Filed 7–20–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–118)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Phoenix Systems International, Inc. of Pine Brooke, NJ, has applied for an exclusive foreign patent license to practice the invention described and claimed in NASA Case No. KSC–12664–3 PCT entitled ''Emission Control System,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of an exclusive license to Phoenix Systems International, Inc. should be sent to Assistant Chief Counsel/Patent Counsel, NASA, Mail Code: CC–A, Office of the Chief Counsel, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

DATES: Responses to this notice must be received by September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel/Assistant Chief Counsel, NASA, Office of the Chief Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: July 14, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–14304 Filed 7–20–05; 8:45 am]

BILLING CODE 7510–13–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an

agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* NRC Form 354, Data Report on Spouse'.
3. *The form number if applicable:* NRC Form 354.
4. *How often the collection is required:* On occasion.
5. *Who will be required or asked to report:* NRC employees, contractors, licensees, and applicants who marry after completing NRC's Personnel Security forms, or marry after having been granted an NRC access authorization or employment clearance.
6. *An estimate of the number of annual responses:* 60.
7. *The estimated number of annual respondents:* 60.
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 12 hours (.20 hour per response).
9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.
10. *Abstract:* Completion of the NRC Form 354 is a mandatory requirement for NRC employees, contractors, licensees, and applicants who marry after submission of the Personnel Security Forms, or after receiving an access authorization or employment clearance to permit the NRC to assure there is no increased risk to the common defense and security.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 22, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date: John A. Asalone, Office of Information and Regulatory Affairs (3150–0026), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated in Rockville, Maryland, this 14th day of July, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–14360 Filed 7–20–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 71–0122; Approval No. 0122; EA–01–164]

In the Matter of J. L. Shepherd & Associates; San Fernando, CA; Confirmatory Order Rescinding Order (Effective Immediately)

I

J. L. Shepherd & Associates (JLS&A) was the holder of Quality Assurance (QA) Program Approval for Radioactive Material Packages No. 0122 (Approval No. 0122), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 71, Subpart H. The approval was originally issued January 17, 1980, pursuant to the QA requirements of 10 CFR 71.101. QA activities included: design, procurement, fabrication, assembly, testing, modification, maintenance, repair, and use of transportation packages subject to the provisions of 10 CFR Part 71. In addition to an NRC-approved QA program satisfying the provisions of 10 CFR Part 71, Subpart H, JLS&A was required to comply with the requirements in 10 CFR Part 71, Subpart C, which grants a general license authorizing licensed material for which a Certificate of Compliance (CoC) had been issued by the NRC to be transported or delivered to a carrier for transport. Based on JLS&A failure to comply with these requirements, QA Program Approval No. 0122 was withdrawn, by the immediately effective NRC Order, dated July 3, 2001 (July 2001 Order) (66 FR 36603, July 12, 2001).

II

The NRC issued the July 2001 Order because the NRC lacked confidence that JLS&A was implementing its NRC-approved QA Program (71–0122, Revision No. 5) in full conformance with the terms and conditions of an NRC CoC and with 10 CFR Part 71, Subpart H.

On several occasions subsequent to imposition of the July 2001 Order, JLS&A has requested, based on its proposed Near-Term Corrective Action Plan (NTCAP), interim relief from the July 2001 Order to allow shipments in U.S. Department of Transportation (DOT) specification packaging designated as 20WC. On August 17, 2001, in response to the July 2001 Order, JLS&A requested interim relief pursuant to its proposed NTCAP to allow 68 shipments to 16 customers, subject to JLS&A's commitment to take certain actions regarding implementation of its 10 CFR Part 71 QA Program. On September 19, 2001, the NRC issued a Confirmatory Order Relaxing the July 3, 2001, Order (September 2001 Order) based on JLS&A commitment to hold all shipments until NRC completed an inspection which confirmed JLS&A's satisfactory completion of the actions identified in its August request. Subsequent to certifications under oath and affirmation from both the Independent Auditor and J. L. Shepherd, the President of JLS&A, that the conditions for issuance of an Order had been met, the NRC conducted an inspection at the JLS&A facility on November 13–15, 2001. As a result of the inspection findings, the inspection team authorized JLS&A to commence the shipments in accordance with the September 2001 Order.

By letter dated December 7, 2001, JLS&A requested that provisions of the July 2001 Order be relaxed based on a showing of good cause. Specifically, JLS&A requested interim relief to ship an irradiator to Surry Nuclear Power Station and return the replaced unit to JLS&A's facility in California. JLS&A proposed to use the NTCAP specified in the September 2001 Order to authorize these two shipments in DOT specification packaging designated as 20WC. The NRC Staff reviewed JLS&A's relief request to determine whether the requested relief would be consistent with assurances that public health and safety are maintained. As a result, the NRC issued a Confirmatory Order Relaxing Order dated December 13, 2002 (December 2002 Order), which relaxed the July 2001 Order to grant interim relief to allow two shipments to one customer in 20WC packages in accordance with JLS&A's NTCAP, provided certain commitments were met.

By letters dated February 26, 2002, as supplemented March 13, 18, and 25, 2002, JLS&A requested that provisions of the July 2001 Order be relaxed based on a showing of good cause. Specifically, JLS&A requested an extension of the September 2001 Order expiration date from March 31, 2002 to June 30, 2002, to authorize JLS&A to complete shipment of Type B quantities of radioactive material in DOT 20WC specification packaging that was authorized by the September 2001 Order. The extension of the expiration date was necessary since many of the JLS&A customers did not obtain the necessary licensing approval or building modification in time for the shipments to be completed by March 31, 2002. In addition, JLS&A requested authorization to make additional shipment to customers not approved by the September 2001 Order. JLS&A proposed to use the NTCAP specified in the September 2001 Order. JLS&A committed to: (1) Inspect the 20WC package (both shield and overpack); (2) document the inspection in a separate report; (3) perform the shipping and inspection function only by trained personnel; and (4) have the Independent Auditor verify compliance of each shipment with the foregoing commitments and certify such compliance in the routine monthly reports to the NRC.

This Order only granted additional time to complete the shipments previously authorized by the September 2001 Order to be completed by March 31, 2002. On February 26, 2002, JLS&A consented to issuance of a Confirmatory Order (February 2002 Order) granting interim relief from the July 2001 Order subject to the commitments, as described, agreed that the Confirmatory Order would be effective upon issuance, and agreed to waive its right to a hearing on this action. Implementation of these commitments, as described, provided assurance that sufficient resources were applied to the QA program, and that the program would be conducted safely and in accordance with NRC requirements.

In response to JLS&A's most recent request for interim relief, and based on a showing of good cause, the NRC issued a Confirmatory Order dated May 30, 2003, Confirmatory Order Relaxing Order (May 2003 Order) (68 FR 34010, June 6, 2003), that allowed JLS&A to make shipments through June 1, 2005, and expanded JLS&A's shipment authorization to transportation packaging as authorized by JLS&A's implementation of Revision 7 of the conditionally approved QA Program Approval No. 0122. The May 2003 Order contained an expiration date of June 1, 2005.

By letter dated April 7, 2005, JLS&A requested the NRC to rescind the July 2001 Order that withdrew JLS&A's Quality Assurance Program Approval No. 0122. Because the Staff's review of JLS&A's request could not be completed by June 1, 2005, the Staff issued a Confirmatory Order on June 1, 2005, which extended the expiration date of the May 2003 Order to July 1, 2005 (70 FR 34165, June 13, 2005), to allow JLS&A to continue limited operations under Revision 7 of the conditionally approved QA Program Approval No. 0122, while the Staff completed its review.

III

The Staff has completed its review and concluded that the July 2001 Order should be rescinded. JLS&A has completed all of the elements of its NTCAP and has demonstrated, on multiple occasions after relaxation of the July 2001 Order, that it can safely transport Type B radioactive shipments in both DOT Specification 20WC overpacks and NRC-approved CoC packages under their new NRC-approved QA program. In addition, the NRC Spent Fuel Project Office has inspected JLS&A in 2003 and again in 2004 and although minor program implementation deficiencies were found, these findings were of lower safety significance and none were of a severity level comparable to the original findings which precipitated the issuance of the July 2001 Order. In addition, in JLS&A's April 7, 2005 letter, JLS&A committed to the following conditions:

1. JLS&A shall continue implementing its new QA Procedures such that reviews are conducted to ensure that all activities under the scope of Part 71 are governed by procedures defining the activity, documenting the activity, and providing audit trail of the activity performed.

2. The Independent Auditor shall continue to perform quarterly audits verifying the implementation of the conditionally approved JLS&A Quality Assurance Program Plan and Implementing Procedures. Reports shall be provided quarterly by the 20th day of the month following completion of the audit. Any areas of nonconformance, not self identified by JLS&A, shall be reported to NRC.

3. JLS&A shall keep monthly statistics regarding QA Program implementation and procedure adherence. Such statistics shall include the number of nonconformances, the nature of the nonconformances, and indicate those nonconformances that are referred to the corrective action processes. Such information shall be provided to the Independent Auditor who will report any areas of concern to NRC during scheduled reports.

4. JLS&A shall immediately stop work or cause to be stopped any work which would result in a potential hazard to public health and safety.

5. Conditions 1 though 4 shall remain in effect for one year from date of rescission of the July 3 Order, or until the Independent Auditor shall issue four successive quarterly reports that show no violation of NRC regulations and effective implementation of the JLS&A Quality Assurance Program.

On June 23, 2005, JLS&A consented to issuance of this Order with the commitments, as described in Section IV below. JLS&A further agreed in its June 23, 2005, letter that this Order is to be effective upon issuance and that it waived its right to a hearing. Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to JLS&A's Quality Assurance Program Plan and Implementing Procedures, and that the plan and procedures will be conducted safely and in accordance with NRC requirements. I find JLS&A's commitments as set forth in Section IV acceptable and necessary and conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that JLS&A's commitments be by this Order. Based on the above and JLS&A's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR parts 71 and 110, *it is hereby ordered, effective immediately, that* the July 3, 2001, Order is rescinded, reinstating JLS&A's quality assurance program approval and granting relief to J. L. Shepherd and Associates to allow full participation in 10 CFR part 71 transportation activities in accordance with NRC-approved quality assurance program approval, revision 7, based on the following conditions:

1. JLS&A shall continue implementing its new QA Procedures. Reviews shall be conducted to ensure that all activities under the scope of 10 CFR part 71 are governed by procedures defining the activity, documenting the activity, and providing an audit trail of the activity performed.

2. The Independent Auditor shall continue to perform quarterly audits verifying the implementation of the conditionally approved JLS&A Quality Assurance Program Plan and Implementing Procedures. Reports shall be provided quarterly by the 20th day of the month following completion of the audit. Any areas of nonconformance

included in such reports that are not self identified by JLS&A, shall also be reported to NRC, in writing, by the 20th day of the month following completion of the audit.

3. JLS&A shall keep monthly statistics regarding QA Program implementation and procedure adherence. Such statistics shall include the number of nonconformances, the nature of the nonconformances, and those nonconformances referred to the corrective action processes. Such information shall be provided to the Independent Auditor who will report any areas of concern to NRC through scheduled reports.

4. JLS&A shall immediately stop work or cause to be stopped any work which would result in a potential hazard to public health and safety.

5. Conditions 1 though 4 shall remain in effect for one year from date of rescission of the July 3 Order, or until the Independent Auditor shall issue four successive quarterly reports that show no violation of NRC regulations and effective implementation of the JLS&A Quality Assurance Program, whichever is later.

The Director, Office of Enforcement, may in writing, relax or rescind any of the above conditions upon demonstration by JLS&A of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Certificate Holder, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011 and to JLS&A. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 30th day of June, 2005.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Director, Office of Enforcement.

[FR Doc. 05–14358 Filed 7–20–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–61290; License No. SOP–11768; IA–05–15]

In the Matter of Richard M. Probasco; Confirmatory Order (Effective Immediately)

I

Richard M. Probasco (Mr. Probasco) is employed as a Shift Manager at the Pilgrim Nuclear Power Station (Pilgrim). Mr. Probasco is the holder of Senior Reactor Operator (SRO) License Number SOP–11768 issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR Part 55. The license authorizes Mr. Probasco to direct the licensed activities of licensed operators at, and to manipulate all controls of, the Pilgrim Nuclear Power Station, facility license number DPR–35. The facility is located on an Entergy Nuclear Operations, Inc. site in Plymouth, MA.

II

An investigation was initiated by the NRC Office of Investigations (OI) on August 27, 2004, at Pilgrim. This investigation was initiated, in part, to determine if Mr. Probasco did not take appropriate corrective actions when he became aware of the inattentiveness of a Control Room Supervisor (CRS) on June 29, 2004. Based on the evidence developed during its investigation, OI substantiated that, in careless disregard for requirements, Mr. Probasco did not immediately relieve the CRS from duty, have him for-cause fitness-for-duty tested, inform appropriate site personnel, and initiate a Condition Report (CR).

III

In response to a March 23, 2005 letter, Mr. Probasco requested the use of Alternative Dispute Resolution (ADR) to resolve this matter with the NRC. ADR is a process in which a neutral mediator with no decision-making authority assists the NRC and Mr. Probasco in reaching an agreement on resolving any differences regarding the enforcement action. An ADR session was held between Mr. Probasco and the NRC in Philadelphia, Pennsylvania on May 17, 2005, and was mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. During that ADR session, a settlement agreement was reached. The elements of the settlement agreement consisted of the following:

1. Mr. Probasco agreed that he violated an NRC requirement by not properly documenting and informing management of his observation that a CRS was inattentive to duty in the control room on June 29, 2004.

2. The NRC maintained that Mr. Probasco's actions in violating the requirement was in careless disregard of an NRC requirement. Mr. Probasco contended that while he erred in violating the requirement, his actions were not willful, in careless disregard of an NRC requirement. The NRC and Mr. Probasco agreed to disagree on this point.

3. Mr. Probasco, subsequent to the identification of this violation, took actions to assure that he learned from this violation and provided the NRC with assurance that it would not recur. These actions included: (a) Sharing the March 23, 2005 letter from the NRC with his SRO peers at Pilgrim to emphasize the significance of the violation; (b) participating actively to share his experience with all Entergy plants via a corporate notification; and (c) contributing to the preparation of an

operating experience report with the Institute of Nuclear Power Operations.

4. As a result of Mr. Probasco's actions, he recognized an opportunity for licensed operators at Pilgrim, as well as licensed operators at other nuclear facilities, to learn from his violation. Mr. Probasco agreed to participate in future training sessions at Pilgrim, including crew training, teamwork training, lifestyle training, and requalification module development, to convey his personal lessons-learned from this matter. Mr. Probasco also agreed to convey his personal lessons-learned to other licensed operators at other nuclear power plants by issuance of a letter, within 90 days of issuance of the Letter of Reprimand referenced in Section III.5 below, to the Communicator (the publication of the Professional Reactor Operator Society) requesting publication therein, and making a presentation at a future symposium at a meeting of the Professional Reactor Operator Society, if invited.

5. In light of the actions Mr. Probasco has taken as described in Item 3 above, those actions he has committed to do as described in Item 4 above, and his agreement to a Letter of Reprimand, the NRC agrees not to issue an Order or a Notice of Violation to Mr. Probasco. However, Mr. Probasco agreed to placement of this Letter of Reprimand into ADAMS as a publically available document, and its placement on the NRC ''Significant Enforcement Actions—Individuals'' Web site for a period of 1 year (the period of time the NRC routinely places Notices of Violation at Severity Level III and above to individuals).

Since Mr. Probasco has agreed to take additional actions to address NRC concerns, as set forth in Section III, the NRC has concluded that its concerns can be resolved through the NRC's confirmation of the commitments as outlined in this Confirmatory Order.

I find that Mr. Probasco's commitments as set forth in Section III above are acceptable. However, in view of the foregoing, I have determined that these commitments be confirmed by this Confirmatory Order. Based on the above and Mr. Probasco's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 55, *it is hereby ordered, effective immediately that:*

1. Mr. Probasco participate in future training sessions at Pilgrim, including crew training, teamwork training, lifestyle training, and requalification module development, to convey his personal lessons-learned from this matter. Mr. Probasco will also convey his personal lessons-learned to other licensed operators at other nuclear power plants by issuance of a letter, within 90 days, to the Communicator (the publication of the Professional Reactor Operator Society) requesting publication therein, and making a presentation at a future symposium at a meeting of the Professional Reactor Operator Society, if invited.

2. Mr. Probasco provide the NRC with one letter detailing his completion of all actions specified in Item 1 above, within 30 days of completion of these actions.

The Director, Office of Enforcement may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Probasco of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Mr. Probasco, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to Baxter. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel by means of facsimile transmission to 301–415–3725 or e-mail to *OGCMailCenter@nrc.gov.* If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order shall be sustained.

An answer or a request for a hearing shall not stay the effectiveness date of this Order.

Dated this 14th day of July, 2005.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Director, Office of Enforcement.

[FR Doc. 05–14359 Filed 7–20–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Union Electric Company (the licensee) to withdraw its June 27, 2003, revised by letter dated December 19, 2003, application for proposed amendment to Facility Operating License No. NPF–30 for the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The proposed amendment would have revised Technical Specification (TS) 3.8.1, ''AC Sources—Operating.'' The proposed change would revise Required Actions A.3 and B.4 for TS 3.8.1 to allow a longer required Action Completion Time (allowed outage time) for an inoperable diesel generator, when removing the diesel generator from service to perform voluntary, planned maintenance.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 22, 2003 (68 FR 43396). However, by letter dated June 28, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the licensee's application for amendment dated June 27, 2003, as revised by letter dated December 19, 2003, and the licensee's letter dated June 28, 2005, which withdrew the application for a license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One

White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 11th day of July, 2005.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–14361 Filed 7–20–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix R, Section III.G.3 for Facility Operating License No. NPF–3, issued to FirstEnergy Nuclear Operating Company (FENOC or the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS), located in Ottawa County, Ohio. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would be an exemption to certain requirements of 10 CFR Part 50, Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' Section III.G.3, ''Fire Protection of Safe Shutdown Capability.'' Specifically, the licensee would be exempt from the requirements to install a fixed fire suppression system in Fire Area HH for DBNPS and to install fire detection in the approximately 4 percent of Fire Area HH not currently covered by a fire detection system.

The proposed action is in accordance with the licensee's application dated January 20, 2004 (Agencywide Documents Access Management System (ADAMS) Accession No. ML0420220470), as supplemented by letters dated September 3, 2004 (ADAMS Accession No. ML0402520326), and February 25, 2005 (ADAMS Accession No. ML050610249).

The Need for the Proposed Action

The requirements specified in 10 CFR 50, Appendix R, Section III.G.3, require fire detection and fixed fire suppression in areas for which alternate shutdown capability is provided. The total combustible loading in Fire Area HH is less than 20,000 BTU/ft^2. Existing fire protection capability in the area consists of a fire detection system, protecting Room 603 (approximately 96 percent of Fire Area HH, not including Rooms 603A and 603B) and manual fire suppression capability consisting of portable fire extinguishers and standpipe hose stations for the protection of the entire area. The exemption is needed because the current fire detection and fire suppression capability is sufficient to protect the health and safety of the public.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed exemption does not involve radioactive wastes, release of radioactive material into the atmosphere, solid radioactive waste, or liquid effluents released to the environment. The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The DBNPS systems were evaluated in the Final Environmental Statement (FES) dated October 1975 (NUREG 75/097). The proposed exemption will not involve any change in the waste treatment systems described in the FES.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the DBNPS FES dated October 1975.

Agencies and Persons Consulted

On April 8, 2005, the staff consulted with Ohio State official, Ms. Carol O'Claire of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated January 20, 2004, September 3, 2004, and February 25, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–

397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of July, 2005.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–14362 Filed 7–20–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334]

FirstEnergy Nuclear Operating Company; Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on June 21, 2005 (70 FR 35737), that incorrectly referenced the date of an amendment request. This action is necessary to correct an erroneous date. The correct date of the amendment request is April 13, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Colburn, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1402, e-mail: *TGC@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 35737, in the third column, the second-to-last paragraph is corrected to read ''Date of amendment request: April 11, 2005'' to ''Date of amendment request: April 13, 2005.''

Dated in Rockville, Maryland, this 14th day of July, 2005.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–14363 Filed 7–20–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 78–11

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 78–11, Medicare Part B Certification, collects information from annuitants, their spouses, and survivor annuitants to determine their eligibility under the Retired Federal Employees Health Benefits Program for a Government contribution toward the cost of Part B of Medicare.

Approximately 100 RI 78–11 forms are completed annually. Each form requires approximately 10 minutes complete. The annual estimated burden is 17 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Pamela S. Israel, Chief, Operations Support Group, Retirement Services Programs, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and

Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–14239 Filed 7–20–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Currently Approved Information Collection: RI 20–120

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a currently approved information collection. RI 20–120, Request for Change to Unreduced Annuity, is used to collect information OPM needs to comply with wishes of the retired Federal employee whose marriage has ended.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

We estimated we will process 5,000 requests annually from RI 20–120. This form takes an average of 30 minutes per response to complete. The annual burden is estimated to be 2,500 hours.

For copies of this proposal, contact Mary Beth Smith-Tooney on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Programs, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, Support Group, (202) 606–0623.

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–14242 Filed 7–20–05; 8:45 am]

BILLING CODE 6325–38–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 34–1 and 34–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM to determine whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. RI 34–3, Notice of Amount Due Because of Annuity Overpayment, informs the annuitant about the overpayment and collects information.

Approximately 520 RI 34–1 and 1, 561 RI 34–3 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 520 hours and 1,561 hours respectively. The total amount estimated burden is 2,081 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 498–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540, and Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Administrative Services Branch, (202) 606–0623.

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–14243 Filed 7–20–05; 8:45 am]

BILLING CODE 6325–38–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Quasette Crowner, Chief, Executive Resources Group, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–8046.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B and C between June 1, 2005 and June 30, 2005. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for June 2005.

Schedule B

No Schedule B appointments were approved for June 2005.

Schedule C

The following Schedule C appointments were approved during June 2005:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS60030 Confidential Assistant to the Deputy Director, Office of Management and Budget. Effective June 15, 2005.

Office of National Drug Control Policy

QQGS00087 Special Assistant to the Special Assistant to the Director. Effective June 22, 2005.

Office of the United States Trade Representative

TNGS00017 Director of Chief Operations to the United States Trade Representative. Effective June 13, 2005.

Section 213.3304 Department of State

DSGS60954 Special Assistant to the Chief of Protocol. Effective June 07, 2005.

DSGS60964 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective June 13, 2005.

DSGS60966 Staff Assistant to the Assistant Secretary for Public Affairs. Effective June 23, 2005.

DSGS60968 Special Assistant to the Assistant Secretary for Public Affairs. Effective June 23, 2005.

DSGS60969 Foreign Affairs Officer to the Assistant Secretary for East Asian and Pacific Affairs. Effective June 23, 2005.

DSGS60970 Special Assistant to the Assistant Secretary for Public Affairs. Effective June 23, 2005.

DSGS60971 Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective June 23, 2005.

Section 213.3305 Department of the Treasury

DYGS00458 Special Assistant to the Treasurer of the United States. Effective June 03, 2005.

Section 213.3306 Department of Defense

DDGS16883 Staff Assistant to the Special Assistant for Business Transformation. Effective June 22, 2005.

DDGS16880 Staff Assistant to the Deputy Assistant Secretary of Defense (Resources and Plans). Effective June 28, 2005.

DDGS16884 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective June 28, 2005.

Section 213.3310 Department of Justice

DJGS00058 Chief of Staff to the Assistant Attorney General for Justice Programs. Effective June 03, 2005.

DJGS00019 Special Assistant to the Chairman, Foreign Claims Settlement Commission. Effective June 06, 2005.

DJGS00184 Special Assistant to the Deputy Attorney General. Effective June 06, 2005.

DJGS00063 Project Safe Neighborhoods Coordinator to the Deputy Attorney General. Effective June 10, 2005.

DJGS00390 Counsel to the Assistant Attorney General (Legal Counsel). Effective June 10, 2005.

DJGS00233 Counsel to the Assistant Attorney General, Civil Division. Effective June 21, 2005.

Section 213.3311 Department of Homeland Security

DMGS00373 Deputy White House Liaison to the White House Liaison. Effective June 02, 2005.
DMGS00372 Protocol Coordinator to the Director of Scheduling and Advance. Effective June 06, 2005.
DMGS00362 Policy Assistant to the Chief of Staff. Effective June 07, 2005.
DMGS00371 Confidential Assistant to the Counselors to the Chief of Staff. Effective June 07, 2005.
DMGS00370 Senior Communications Advisor to the Assistant Secretary for Public Affairs. Effective June 10, 2005.
DMGS00377 Assistant Director of Legislative Affairs for Miscellaneous Offices to the Director of Legislative Affairs for Secretarial Offices. Effective June 22, 2005.
DMGS00375 Coordination Officer for State and Territorial Affairs to the Director, State and Local Affairs. Effective June 24, 2005.
DMGS00376 Special Assistant to the Special Assistant for Science and Technology Policy Planning. Effective June 24, 2005.
DMGS00378 Confidential Assistant to the General Counsel. Effective June 28, 2005.

Section 213.3312 Department of the Interior

DIGS61039 Special Assistant to the Executive Director, Take Pride in America. Effective June 29, 2005.

Section 213.3313 Department of Agriculture

DAGS00796 Congressional Liaison to the Deputy Assistant Secretary for Congressional Relations. Effective June 02, 2005.
DAGS00798 Confidential Assistant to the Administrator, Rural Housing Service. Effective June 10, 2005.
DAGS00799 Speech Writer to the Director of Communications. Effective June 16, 2005.
DAGS00801 Staff Assistant to the Secretary. Effective June 22, 2005.
DAGS00806 Deputy Director of Advance to the Director of Communications. Effective June 22, 2005.
DAGS00802 Staff Assistant to the Chief, Natural Research Conservation Service. Effective June 23, 2005.
DAGS00803 Director, Intergovernmental Affairs to the Deputy Assistant Secretary. Effective June 23, 2005.
DAGS00804 Deputy Press Secretary to the Director of Communications. Effective June 27, 2005.
DAGS00805 Director of Speechwriter to the Director of Communications. Effective June 24, 2005.
DAGS00807 White House Liaison to the Secretary. Effective June 30, 2005.

Section 213.3314 Department of Commerce

DCGS00692 Director of Congressional Affairs to the Deputy Assistant Secretary for External Affairs and Communication. Effective June 07, 2005.
DCGS60548 Confidential Assistant to the Chief of Staff. Effective June 07, 2005.
DCGS60287 Confidential Assistant to the Chief of Staff to the Deputy Secretary. Effective June 14, 2005.
DCGS60670 Director, Office of Business Liaison to the Chief of Staff for National Oceanic and Atmospheric Administration. Effective June 22, 2005.

Section 213.3315 Department of Labor

DLGS60183 Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective June 14, 2005.
DLGS60231 Staff Assistant to the Counselor in the Office of the Secretary. Effective June 22, 2005.
DLGS60093 Staff Assistant to the Secretary of Labor. Effective June 23, 2005.
DLGS60117 Senior Advisor to the Assistant Secretary for Employment Standards. Effective June 23, 2005.

Section 213.331 Department of Health and Human Services

DHGS60016 Confidential Assistant to the Director, Center for Faith Based and Community Initiatives. Effective June 10, 2005.
DHGS60021 Special Assistant to the Director, Office of Community Services. Effective June 10, 2005.
DHGS60243 Regional Director, Atlanta, Georgia, Region IV to the Director of Intergovernmental Affairs. Effective June 16, 2005.
DHGS60244 Regional Director, Seattle, Washington, Region X to the Director of Intergovernmental Affairs. Effective June 23, 2005.
DHGS60681 Confidential Assistant to the Director of Media Affairs. Effective June 28, 2005.

Section 213.3317 Department of Education

DBGS00397 Special Assistant to the Chief of Staff. Effective June 02, 2005.
DBGS00400 Deputy Assistant Secretary for Planning to the Chief of Staff. Effective June 03, 2005.
DBGS00398 Confidential Assistant to the Chief of Staff. Effective June 06, 2005.
DBGS00391 Confidential Assistant to the Secretary. Effective June 07, 2005.
DBGS00399 Special Assistant to the Assistant Secretary for Civil Rights. Effective June 10, 2005.
DBGS00402 Confidential Assistant to the Special Advisor to the Secretary. Effective June 10, 2005.
DBGS00403 Confidential Assistant to the Chief of Staff. Effective June 10, 2005.
DBGS00405 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective June 14, 2005.
DBGS00401 Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective June 15, 2005.
DBGS00406 Confidential Assistant to the Deputy Director, Office of Public Affairs. Effective June 16, 2005.
DBGS00404 Special Assistant to the Deputy General Counsel for Departmental and Legislative Service. Effective June 20, 2005.

Section 213.3318 Environmental Protection Agency

EPGS05017 Senior Advisor to the Administrator. Effective June 15, 2005.

Section 213.3325 United States Tax Court

JCGS60059 Secretary (Confidential Assistant) to the Chief Judge. Effective June 16, 2005.

Section 213.3327 Department of Veterans Affairs

DVGS60099 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective June 07, 2005.

Section 213.3331 Department of Energy

DEGS00475 Press Secretary to the Director, Public Affairs Effective June 14, 2005.
DEGS00473 Public Affairs Specialist to the Director of Congressional, Intergovernmental and Public Affairs. Effective June 15, 2005.
DEGS00472 Communications Director to the Director, Office of Civilian Radioactive Waste Management. Effective June 16, 2005.

Section 213.3337 General Services Administration

GSGS60069 Events Management Specialist to the Deputy Director for Communications. Effective June 02, 2005.
GSGS00167 Confidential Assistant to the Chief Acquisition Officer. Effective June 06, 2005.

Section 213.3355 Social Security Administration

SZGS00015 Confidential Assistant to the Chief of Staff. Effective June 22, 2005.

Section 213.3360 Consumer Product Safety Commission

PSGS60006 Special Assistant (Legal) to the Chairman, Consumer Product Safety Commission. Effective June 01, 2005.
PSGS60010 Executive Assistant to a Commissioner. Effective June 14, 2005.
PSGS60049 Special Assistant (Legal) to a Commissioner. Effective June 28, 2005.

Section 213.3384 Department of Housing and Urban Development

DUGS60212 Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective June 15, 2005.
DUGS60319 Regional Director to the Assistant Deputy Secretary for Field Policy and Management. Effective June 16, 2005.
DUGS60175 Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective June 22, 2005.
DUGS60255 Special Assistant to the Assistant Secretary for Policy Development and Research. Effective June 22, 2005.
DUGS60517 Regional Director to the Assistant Deputy Secretary for Field Policy and Management. Effective June 23, 2005.
DUGS60390 Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective June 28, 2005.
DUGS60534 Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective June 30, 2005.
DUGS60427 Staff Assistant to the Assistant Secretary for Administration/Chief Human Capital Officer. Effective June 30, 2005.

Section 213.3391 U.S. Office of Personnel Management

PMGS00052 Special Counsel to the General Counsel. Effective June 15, 2005.

Section 213.3394 Department of Transportation

DTGS60173 Director of Congressional Affairs to the Administrator. Effective June 06, 2005.
DTGS60294 Counselor to the Under Secretary. Effective June 10, 2005.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–14241 Filed 7–20–05; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 17Ab2–1; SEC File No. 270–203; OMB Control No. 3235–0195.
Form CA–1; SEC File No. 270–203; OMB Control No. 3235–0195.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ab2–1 and Form CA–1: Registration of Clearing Agencies

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitate modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in Section 17A of the Securities Exchange Act of 1934 (''Exchange Act''), (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

There are currently approximately ten registered clearing agencies and five clearing agencies that have been granted an exemption from registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $18,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: July 13, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3872 Filed 7–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 17f–2(c); SEC File No. 270–35; OMB Control No. 3235–0029.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission

(''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to Section 17(f)(2) of the Securities Exchange Act of 1934 to submit their fingerprints through a national securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. Plans have been approved for the American, Boston, Chicago, New York, Pacific, and Philadelphia stock exchanges and for the National Association of Securities Dealers and the Chicago Board Options Exchange.

It is estimated that 85,000 registered broker-dealers submit approximately 275,000 fingerprint cards to exchanges or a registered security association on an annual basis. It is approximated that it should take 15 minutes per fingerprint card to comply with Rule 17f–2(c). The total reporting burden is estimated to be 68,750 hours.

Because the Federal Bureau of Investigation will not accept fingerprint cards directly from submitting organizations, Commission approval of plans from certain exchanges and national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: July 13, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3873 Filed 7–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8589; 34–52047, File No. 265–23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing notice that it will hold a public meeting from 1 to 5:30 p.m. on each of Tuesday, August 9, 2005, and Wednesday, August 10, 2005, at The John Marshall Law School, Room 300, 315 South Plymouth Court, Chicago, Illinois. The meeting will be audio webcast on the Commission's Web site at *http://www.sec.gov*.

The agenda for the Tuesday, August 9, 2005, session includes hearing oral testimony and considering written statements that have been filed with the Advisory Committee in connection with the meeting. The oral testimony will focus on the costs and burdens imposed upon smaller public companies as a result of the Sarbanes-Oxley Act of 2002 and whether the costs and burdens are commensurate with the benefits to investors and the public. The agenda for the Wednesday, August 10, 2005, session of the meeting includes considering reports of subcommittees of the Advisory Committee and any recommendations proposed by subcommittees for adoption by the Advisory Committee. The Advisory Committee expects to consider reports of subcommittees on (1) defining the term ''smaller public company'' for purposes of delineating the scope of the Advisory Committee's work and scaling federal securities regulation based on smaller company size and (2) recommending extension of the compliance date for certain smaller public companies to meet requirements relating to reporting on the effectiveness of internal control over financial reporting, in accordance with Section 404 of the Sarbanes-Oxley Act.

DATES: Written statements should be received on or before August 2, 2005.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acspc.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov*. Please include File Number 265–23 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. 265–23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acspc.shtml*).

Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Persons wishing to provide oral testimony at the Tuesday, August 9, 2005, session should contact one of the SEC staff persons listed below by August 1, 2005, and submit a written statement by the deadline for written statements. Sufficient time may not be available to accommodate all those wishing to provide oral testimony. The Co-Chairs of the Advisory Committee have reserved the right to select witnesses and limit the time of witnesses permitted to testify.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, at (202) 551–3260, or William A. Hines, Special Counsel, at (202) 551–3320, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.–App. 1, § 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: July 15, 2005.

Jonathan G. Katz,

Committee Management Officer.

[FR Doc. E5–3900 Filed 7–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of July 18, 2005:

A Closed Meeting will be held on Thursday, July 21, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a) (3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session and that no earlier notice thereof was possible.

The subject matters of the Closed Meeting scheduled for Thursday, July 21, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 18 , 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–14460 Filed 7–18–05; 4:01 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52032; File No. SR–CBOE–2002–03]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Customer Portfolio and Cross-Margining Requirements

July 14, 2005.

I. Introduction

On January 15, 2002, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, a proposed rule change seeking to amend its rules, for certain customer accounts, to allow member organizations to margin listed, broad-based, market index options, index warrants, futures, futures options and related exchange-traded funds according to a portfolio margin methodology. The CBOE seeks to introduce the proposed rule as a two-year pilot program that would be made available to member organizations on a voluntary basis.

The proposed rule change was published in the **Federal Register** on March 29, 2002.[3] The Commission received two comment letters in response to the March 29, 2002 **Federal Register** notice.[4] On April 2, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The proposed rule change and Amendment No. 1 were published in the **Federal Register** on December 27, 2004.[6] The Commission received eleven comment letters in response to the December 27, 2004 **Federal Register** notice.[7]

On April 15, 2005, the Exchange filed Amendment No. 2 [8] to the proposed rule change. The proposed rule change and Amendment Nos. 1 and 2 were published in the **Federal Register** on May 3, 2005.[9] The Commission received one comment in response to the May 3, 2005 **Federal Register** notice.[10]

The comment letters and the Exchange's responses to the comments [11] are summarized below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45630 (March 22, 2002), 67 FR 15263 (March 29, 2002).

[4] *See* letter from Carl E. Vander Wilt, Federal Reserve Bank of Chicago, to Jonathan G. Katz, Secretary, Commission, dated July 18, 2002 (''Vander Wilt Letter''); and e-mail from Mike Ianni, Private Investor to *rule-comments@sec.gov*, dated November 7, 2002 (''Ianni E-mail'').

[5] *See* letter from Richard Lewandowski, Vice President, Division of Regulatory Services, CBOE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation (''Division''), Commission, dated April 1, 2004 (''Amendment No. 1''). The CBOE proposed Amendment No. 1 to make corrections or clarifications to the proposed rule, or to reconcile differences between the proposed rule and a parallel filing by the NYSE. *See* Securities Exchange Act Release No. 46576 (October 1, 2002), 67 FR 62843 (October 8, 2002) (File No. SR–NYSE–2002–19).

[6] *See* Securities Exchange Act Release No. 50886 (December 20, 2004), 69 FR 77275 (December 27, 2004); *see also* Securities Exchange Act Release No. 50885 (December 20, 2004), 69 FR 77287 (December 27, 2004).

[7] *See* letter from Anthony J. Saliba, President, LiquidPoint, LLC, to Jonathan G. Katz, Secretary, Commission, dated January 21, 2005 (''Saliba Letter''); letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association (''FIA''), and Gerard J. Quinn, Vice President and Associate General Counsel, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, Commission, dated January 14, 2005 (''Wierzynski/Quinn Letter''); letter from Craig S. Donohue, Chief Executive Officer, Chicago Mercantile Exchange, to Jonathan G. Katz, Secretary, Commission, dated January 18, 2005 (''Donohue Letter''); letter from Robert C. Sheehan, Chairman, Electronic Brokerages Systems, LLC, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Sheehan Letter''); letter from William O. Melvin, Jr., President, Acorn Derivatives Management, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Melvin Letter''); letter from Margaret Wiermanski, Chief Operating & Compliance Officer, Chicago Trading Company, to Jonathan G. Katz, Secretary, Commission, dated January 20, 2005 (''Wiermanski Letter''); e-mail from Jeffrey T. Kaufmann, Lakeshore Securities, L.P., to Jonathan G. Katz, Secretary, Commission, dated January 24, 2005 (''Kaufmann Letter''); letter from J. Todd Weingart, Director of Floor Operations, Mann Securities, to Jonathan G. Katz, Secretary, Commission, dated January 25, 2005 (''Weingart Letter''); letter from Charles Greiner III, LDB Consulting, Inc., to Jonathan G. Katz, Secretary, Commission, dated January 26, 2005 (''Greiner Letter''); letter from Jack L. Hansen, Chief Investment Officer and Principal, The Clifton Group, to Jonathan G. Katz, Secretary, Commission, dated February 1, 2005 (''Hansen Letter''); and letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, and Ira D. Hammerman, Senior Vice President and General Counsel, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated March 4, 2005 (''Wierzynski/Hammerman Letter'').

[8] *See* Partial Amendment No. 2 (''Amendment No. 2''). The Exchange submitted this partial amendment, pursuant to the request of Commission staff, to remove the paragraph under which any affiliate of a self-clearing member organization could participate in portfolio margining, without being subject to the $5 million equity requirement.

[9] *See* Securities Exchange Act Release No. 34–51614 (April 26, 2005), 70 FR 22935 (May 3, 2005); *see also* Securities Exchange Act Release No. 34–51615 (April 26, 2005), 70 FR 22953 (May 3, 2005).

[10] *See* letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, The Options Clearing Corporation, to Jonathan G. Katz, Secretary, Commission, dated May 27, 2005 (''Navin Letter'').

[11] *See* letter from Timothy H. Thompson, Senior Vice President, Chief Regulatory Officer, Regulatory Services Division, CBOE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated May 2, 2005 (''CBOE Response''). The Commission received the

This Order approves the proposed rule, as amended.[12]

II. Description

a. Summary of Proposed Rule Change

The CBOE has proposed to amend its rules, for certain customer accounts, to allow member organizations to margin listed broad-based securities index options, warrants, futures, futures options and related exchange-traded funds according to a portfolio margin methodology. The CBOE seeks to introduce the proposed rule as a two-year pilot program that would be made available to member organizations on a voluntary basis.

b. Overview—Portfolio Margin Computation

(1) Portfolio Margin

Portfolio margining is a methodology for calculating a customer's margin requirement by "shocking" a portfolio of financial instruments at different equidistant points along a range representing a potential percentage increase and decrease in the value of the instrument or underlying instrument in the case of a derivative product. For example, the calculation points could be spread equidistantly along a range bounded on one end by a 10% increase in market value of the instrument and at the other end by a 10% decrease in market value. Gains and losses for each instrument in the portfolio are netted at each calculation point along the range to derive a potential portfolio-wide gain or loss for the point. The margin requirement is the amount of the greatest portfolio-wide loss among the calculation points.

Under the Exchange's proposed rule, a portfolio would consist of, and be limited to, financial instruments in the customer's account within a given broad-based US securities index class (*e.g.*, the S&P 500 or S&P 100).[13] The gain or loss on each position in the portfolio would be calculated at each of 10 equidistant points ("valuation points") set at and between the upper and lower market range points. The range for non-high capitalization indices would be between a market increase of 10% and a decrease of 10%. High capitalization indices would have a range of between a market increase of 6% and a decrease of 8%.[14] A theoretical options pricing model would be used to derive position values at each valuation point for the purpose of determining the gain or loss. The amount of margin (initial and maintenance) required with respect to a given portfolio would be the larger of: (1) The greatest loss amount among the valuation point calculations; or (2) the sum of $.375 for each option and future in the portfolio multiplied by the contract's or instrument's multiplier. The latter computation establishes a minimum margin requirement to ensure that a certain level of margin is required from the customer. The margin for all other portfolios of broad based US securities index instruments within an account would be calculated in a similar manner.

Certain portfolios would be allowed offsets such that, at the same valuation point, for example, 90% of a gain in one portfolio may reduce or offset a loss in another portfolio.[15] The amount of offset allowed between portfolios would be the same as permitted under Rule 15c3–1a for computing a broker-dealer's net capital.[16]

Under the Exchange's proposed rule, the theoretical prices used for computing profits and losses must be generated by a theoretical pricing model that meets the requirements in Rule 15c3–1a.[17] These requirements include, among other things, that the model be non-proprietary, approved by a Designated Examining Authority ("DEA") and available on the same terms to all broker-dealers.[18] Currently, the only model that qualifies under Rule 15c3–1a is the OCC's Theoretical Intermarket Margining System ("TIMS").

(2) Cross-Margining

The Exchange's proposed rule permits futures and futures options on broad-based US securities indices to be included in the portfolios. Consequently, futures and futures options would be permitted offsets to the securities positions in a given portfolio. Operationally, these offsets would be achieved through cross-margin agreements between the OCC and the futures clearing organizations holding the customer's futures positions. Cross-margining would operate similar to the cross-margin program that the Commission and the Commodity Futures Trading Commission ("CFTC") approved for listed options market-makers and proprietary accounts of clearing member organizations.[19] For determining theoretical gains and losses, and resultant margin requirements, the same portfolio margin computation program will be applied to portfolio margin accounts that include futures. Under the proposed rule, a separate cross-margin account must be established for a customer.

c. Margin Deficiency

Under the Exchange's proposed rule, account equity would be calculated and maintained separately for each portfolio margin account and a margin call would need to be met by the customer within one business day (T+1), regardless of whether the deficiency is caused by the addition of new positions, the effect of an unfavorable market movement, or a combination of both. The portfolio margin methodology, therefore, would establish both the customer's initial and maintenance margin requirement.

d. $5.0 Million Equity Requirement

The Exchange's proposed rule would require a customer (other than a broker-dealer or a member of a national futures exchange) to maintain a minimum account equity of not less than $5.0 million. This requirement can be met by combining all securities and futures accounts owned by the customer and carried by the broker-dealer (as broker-dealer and futures commission merchant), provided ownership is identical across all combined accounts. The proposed rule would require that, in the event account equity falls below the $5 million minimum, additional

CBOE Response on June 1, 2005; *see also* letter from Timothy H. Thompson, Senior Vice President, Chief Regulatory Officer, Regulatory Services Division, CBOE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated June 29, 2005.

[12] By separate orders, the Commission also is approving a parallel rule filing by the NYSE [SR–NYSE–2002–19], and a related rule filing by the Options Clearing Corporation ("OCC") [SR–OCC–2003–04]. See Securities Exchange Act Release No. 52031 (July 14, 2005) and Securities Exchange Act Release No. 52030 (July 14, 2005). In addition, the staff of the Division of Market Regulation is issuing certain no-action relief related to the OCC's rule filing. *See* letter from Bonnie Gauch, Attorney, Division of Market Regulation, Commission, to William H. Navin, General Counsel, OCC, dated July 14, 2005.

[13] A "portfolio" is defined in the rule as "options of the same options class grouped with their underlying instruments and related instruments."

[14] These are the same ranges applied to options market makers under Appendix A to Rule 15c3–1 (17 CFR 240.15c3–1a), which permits a broker-dealer when computing net capital to calculate securities haircuts on options and related positions using a portfolio margin methodology. *See* 17 CFR 240.15c3–1a(b)(1)(iv)(A); Letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Richard Lewandowski, Vice President, Regulatory Division, The Chicago Board Options Exchange, Inc. (Jan. 13, 2000).

[15] These offsets would be allowed between portfolios within the High Capitalization, Broad Based Index Option product group and the Non-High Capitalization, Broad Based Index product group.

[16] 17 CFR 240.15c3–1a.

[17] *See* 17 CFR 240.15c3–1a(b)(1)(i)(B).

[18] *Id.*

[19] *See* Securities Exchange Act Release 26153 (Oct. 3, 1988), 53 FR 39567 (Oct. 7, 1988).

equity must be deposited within three business days (T+3).

e. Net Capital

The Exchange's proposed rule would provide that the gross customer portfolio margin requirements of a broker-dealer may at no time exceed 1,000 percent of the broker-dealer's net capital (a 10:1 ratio), as computed under Rule 15c3–1.[20] This requirement is intended to place a ceiling on the amount of portfolio margin a broker-dealer can extend to its customers.

f. Internal Risk Monitoring Procedures

The Exchange's proposed rule would require a broker-dealer that carries portfolio margin accounts to establish and maintain written procedures for assessing and monitoring the potential risks to capital arising from portfolio margining.

g. Margin at the Clearing House Level

The OCC will compute clearing house margin for the broker-dealer using the same portfolio margin methodology applied at the customer level. The OCC will continue to require full payment for all customer long option positions. These positions, however, would be subject to the OCC's lien. This would permit the long options positions to offset short positions in the customer's portfolio margin account. In conjunction with the Exchange's rule proposal, the OCC proposed amending OCC Rule 611 and establishing a new type of omnibus account to be carried at the OCC and known as the ''customer's lien account.'' [21] In order to unsegregate the long option positions, the Commission staff would have to grant certain relief from some requirements of Commission Rules 8c–1, 15c2–1, and 15c3–3.[22] The OCC requested such relief on behalf of its members.[23]

h. Risk Disclosure Statement and Acknowledgement

The Exchange's proposed rule would require a broker-dealer to provide a portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account. This disclosure statement would highlight the risks and describe the operation of a portfolio margin account. The disclosure statement would be divided into two sections, one dealing with portfolio margining and the other with cross-margining. The disclosure statement would note that additional leverage is possible in an account margined on a portfolio basis in relation to existing margin requirements. The disclosure statement also would describe, among other things, eligibility requirements for opening a portfolio margin account, the instruments that are allowed in the account, and when deposits to meet margin and minimum equity requirements are due. Further, there would be a summary list of the special risks of a portfolio margin account, including the increased leverage, time frame for meeting margin calls, potential for involuntary liquidation if margin is not received, inability to calculate future margin requirements because of the data and calculations required, and the OCC lien on long option positions. The risks and operation of the cross-margin account are outlined in a separate section of the disclosure statement.

Further, at or prior to the time a portfolio margin account is initially opened, the broker-dealer would be required to obtain a signed acknowledgement concerning portfolio margining from the customer. A separate acknowledgement would be required for cross-margining. The acknowledgements would contain statements to the effect that the customer has read the disclosure statement and is aware of the fact that long option positions in a portfolio margin account are not subject to the segregation requirements under the Commission's customer protection rules, and would be subject to a lien by the OCC.

An additional acknowledgement form would be required for a cross-margin account. It would contain similar statements as well as statement to the effect that the customer is aware that futures positions are being carried in a securities account, which would make them subject to the Commission's customer protection rules, and Securities Investor Protection Act of 1970 (''SIPA'') [24] in the event the broker-dealer becomes financially insolvent. The Exchange would prescribe the format of the written disclosure statements and acknowledgements, which would allow a broker-dealer to develop its own format, provided the acknowledgement contains substantially similar information and is approved by the Exchange in advance.

i. Rationale for Portfolio Margin

Theoretical options pricing models have become widely utilized since Fischer Black and Myron Scholes first introduced a formula for calculating the value of a European style option in 1973.[25] Other formulas, such as the Cox-Ross-Rubinstein model have since been developed. Option pricing formulas are now used routinely by option market participants to analyze and manage risk. In addition, as noted, a portfolio margin methodology has been used by broker-dealers since 1994 to calculate haircuts on option positions for net capital purposes.[26]

The Board of Governors of the Federal Reserve System (the ''Federal Reserve Board'' or ''FRB'') in its amendments to Regulation T in 1998 permitted SROs to implement portfolio margin rules, provided they are approved by the Commission.[27]

Portfolio margining brings a more risk sensitive approach to establishing margin requirements. For example, in a diverse portfolio some positions may appreciate and others depreciate in response to a given change in market prices. The portfolio margin methodology recognizes offsetting potential changes among the full portfolio of related instruments. This links the margin required to the risk of the entire portfolio as opposed to the individual positions on a position-by-position basis.

Professional investors frequently hedge listed index options with futures positions. Cross-margining would better

[20] 17 CFR 240.15c3–1.

[21] *See* SR–OCC–2003–04, Securities Exchange Act Release No. 51330 (March 8, 2005). As noted above, the Commission is approving the OCC's rule filing. *See* Securities Exchange Act Release No. 52030 (July 14, 2005).

[22] 17 CFR 240.8c–1, 17 CFR 240.15c2–1 and 17 CFR 240.15c3–3, respectively.

[23] *See* Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, The Options Clearing Corporation, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated January 13, 2005. As noted above, the staff of the Division of Market Regulation is issuing a no-action letter providing such relief. *See* letter from Bonnie Gauch, Attorney, Division of Market Regulation, Commission, to William H. Navin, General Counsel, OCC, dated July 14, 2005.

[24] 24 5 U.S.C. 78aaa *et seq.*

[25] *See* Securities Exchange Act Release No. 34–38248 (Feb. 6, 1997), 62 FR 6474 (Feb. 12, 1997) (discussing the development of the options pricing approach to capital); see also Securities Exchange Act Release No. 33761 (March 15, 1994), 59 FR 13275 (March 21, 1994).

[26] *See* letter from Brandon Becker, Director, Division, Commission, to Mary Bender, First Vice President, Division of Regulatory Services, CBOE, and Timothy Hinkes, Vice President, OCC, dated March 15, 1994; see also ''Net Capital Rule,'' Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997).

[27] *See* Federal Reserve System, ''Securities Credit Transactions; Borrowing by Brokers and Dealers''; Regulations G, T, U and X; Docket Nos. R–0905, R–0923 and R–0944, 63 FR 2806 (January 16, 1998). More recently, the FRB encouraged the development of a portfolio margin approach in a letter to the Commission and the CFTC delegating authority to the agencies to jointly prescribe margin regulations for security futures products. *See* letter from the FRB to James E. Newsome, Acting Chairman, CFTC, and Laura S. Unger, Acting Chairman, Commission, dated March 6, 2001.

align their margin requirements with the actual risks of these hedged positions. This could reduce the risk of forced liquidations. Currently, an option (securities) account and futures account of the same customer are viewed as separate and unrelated. Moreover, an option account currently must be liquidated if the risk in the positions has increased dramatically or margin calls cannot be met, even if gains in the customer's futures account offset the losses in the options account. If the accounts are combined (*i.e.*, cross-margined), unnecessary liquidation may be avoided. This could lessen the severity of a period of high volatility in the market by reducing the number of liquidations.

III. Summary of Comments Received and CBOE Response

The Commission received a total of fourteen comment letters to the proposed rule.[28] The comments, in general, were supportive. One commenter stated that ''portfolio margining would enable CBOE to more accurately reflect the risk exposure of options and related positions-potentially reducing the trading costs of market participants and increasing the liquidity and efficiency of the market.'' [29] Some commenters, however, recommended changes to specific provisions of the proposed rule change.

Seven of the comment letters specifically objected to the $5.0 million equity requirement.[30] Three commenters noted that the requirement blocks certain large institutions from participating in portfolio margining because these institutions hold assets at a custodian bank and, consequently, would not hold $5.0 million in an account with a broker-dealer.[31] Five commenters raised the issue that securities index options will be at a disadvantage compared with economically similar CFTC regulated index futures, because futures accounts have no minimum equity requirement.[32]

The Exchange believes that the comments directed at the $5.0 million equity requirements have merit, particularly with respect to certain types of accounts that must hold assets at a custodial bank.[33] The Exchange, however, stated that these comments should not delay implementation of the proposed rule change and noted that it intends to file a proposed rule amendment that would offer alternative methods for meeting the minimum equity requirement after the industry becomes acclimated to the portfolio margin methodology and its operational aspects.

Several commenters stated that other products should be eligible for portfolio margining,[34] such as equities,[35] as well as OCC-cleared equity derivatives.[36] One commenter stated that other risk-based algorithms, such as SPAN,[37] that are recognized by other clearing organizations should be permitted for calculating the portfolio margin requirement, in addition to the OCC's TIMS.[38]

In addition, one commenter stated that the Securities Investor Protection Corporation (''SIPC'') would need to amend its rules in order to provide SIPA protection to futures and options on futures in a securities account.[39] The Exchange disagrees and notes that the proposed rule change was amended, at the request of Commission staff, to require the immediate transfer to another broker-dealer or the liquidation of a cross-margin account in the event that a broker-dealer becomes insolvent. In addition, the Exchange believes that amendments to Commission Rule 15c3–3 could provide customers holding both securities and futures with protection under SIPA.

One commenter, the OCC, strongly urged the Commission to move forward promptly with the approval of the proposed rule changes, and contended that additional regulatory actions are necessary in order to implement the proposed pilot programs.[40] These other regulatory actions include: Commission approval of SR–OCC–2003-04; a Commission ''no-action'' letter in connection with SR–OCC–2003–04; an exemptive order from the CFTC; and amendments to Commission Rule 15c3–3. The Exchange agrees with the OCC that approval of the OCC rule filing and issuance of the ''no-action'' letter are necessary to enable portfolio margining, including cross-margining, to be utilized.[41] The Exchange also urged the Commission to complete all regulatory actions necessary to enable portfolio margining along with the cross-margin component.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [43] in particular, in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. The Commission notes that the proposed portfolio margin rule change is intended to promote greater reasonableness, accuracy and efficiency with respect to Exchange margin requirements for complex listed securities index option strategies. The Commission further notes that the cross-margining capability with related index futures positions in eligible accounts may alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility. Moreover, the Commission notes that approving the proposed rule change would be consistent with the FRB's 1998 amendments to Regulation T, which sought to advance the use of portfolio margining.

Under the proposed rule changes, the Commission notes that a broker-dealer choosing to offer portfolio margining to its customers must employ a methodology that has been approved by the Commission for use in calculating haircuts under Rule 15c3–1a. As stated above, currently, TIMS is the only approved methodology. While some commenters recommended expanding the choice of models, the Commission believes that requiring a broker-dealer to use a model that qualifies for calculating haircuts under Commission Rule 15c3–1a maintains a consistency with the Commission's net capital rule and across potential portfolio margin pricing models. As a result, portfolio margin requirements would vary less from firm to firm. The Commission notes, however, that like Rule 15c3–1a, the proposed rule permits the use of another theoretical pricing model, should one be developed in the future.[44]

[28] *See supra* notes 4, 7 and 10.

[29] *See* Vander Wilt Letter.

[30] *See* Ianni Letter; Weingart Letter; Wiermanski Letter; Hansen Letter; Greiner Letter; Saliba Letter; and Melvin Letter.

[31] *See* Weingart Letter; Wiermanski Letter; and Melvin Letter.

[32] *See* Weingart Letter, Wiermanski Letter; Hansen Letter; Saliba Letter; and Sheehan Letter.

[33] *See* CBOE Response.

[34] *See* Wiermanski Letter; Saliba Letter; and Donohue Letter.

[35] *See* Saliba Letter.

[36] *See* Sheehan Letter.

[37] SPAN is the Chicago Mercantile Exchange's Standard Portfolio Analysis System, which is used by many futures exchanges to calculate margin.

[38] *See* Donohue Letter.

[39] *See* Wierzynski/Hammerman Letter.

[40] *See* Navin Letter.

[41] *See supra* notes 21 and 23.

[42] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(5).

[44] *See also* Securities Exchange Act Release No. 34-38248 (February 6, 1997), 62 FR 6474 (February

Continued

The Commission notes the objections of certain commenters to the $5 million minimum equity requirement. The Commission believes that the requirement circumscribes the number of accounts able to participate and adds safety in that such accounts are more likely to be of significant financial means and investment sophistication.

Finally, the Commission notes that several commenters recommended expanding the products eligible for portfolio margining. The Exchange's proposed rule limits the instruments eligible for portfolio margining to listed products based on broad-based US securities indices, which tend to be less volatile than narrow-based indices and non-index equities. The Commission believes this limitation is appropriate for the pilot program, which should serve as a first step toward the possible expansion of portfolio margining to other classes of securities.

V.Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[45] that the proposed rule change (File No. SR–CBOE–2002–03), as amended, is approved on a pilot basis to expire on July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

J. Lynn Taylor,

Assistant Secretary.

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12, 1997) (discussing in Part II.A. the use of TIMS versus other pricing models).

[45] 15 U.S.C. 78s(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52043; File Nos. SR–DTC–2005–04, SR–FICC–2005–10, and SR–NSCC–2005–05]

Self-Regulatory Organizations; The Depository Trust Company, Fixed Income Clearing Corporation, and National Securities Clearing Corporation; Notice of Filing of Proposed Rule Changes To Establish a Fine for Members Failing To Conduct Connectivity Testing

July 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 13, 2005, The Depository Trust Company (''DTC''), on May 3, 2005, the Fixed Income Clearing Corporation (''FICC''), and on May 4, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which items have been prepared primarily by DTC, FICC, and NSCC. On June 7, 2005, NSCC amended its proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC, FICC, and NSCC are seeking to establish a fine for members who fail to conduct connectivity testing for business continuity purposes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC, FICC, and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. DTC, FICC, and NSCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of these filings is to modify the rules of DTC, FICC, and NSCC to provide that DTC, FICC, and NSCC may impose a fine on any member that is required to conduct connectivity testing for business continuity purposes and fails to do so.

In the aftermath of September 11, 2001, and in conjunction with a financial industry white paper, DTC, FICC, and NSCC require connectivity testing for critical (''Top Tier'') members.[4] The criteria used by DTC, FICC, and NSCC to identify their respective Top Tier members were revenues, clearing fund contributions, settlement amounts, and trading volumes. Connectivity testing for the Top Tier members was initiated on January 1, 2004. Due to the critical importance of being able to assess whether a Top Tier member has sufficient operational capabilities, DTC, FICC, and NSCC have determined that they need the ability to fine any Top Tier member that does not test.[5]

Currently, each member of DTC, FICC, and NSCC that is designated as Top Tier is advised of this status and is provided with information on the testing requirements. Under DTC, FICC, and NSCC's current procedures, if testing is not completed by a Top Tier member by the end of June, a reminder notice is sent to the member. Thereafter, another reminder notice is sent in October and, if necessary, again in December.

The reminder notice sent in December would advise that if testing is not completed by December 31, a fine of $10,000 will be imposed. These fines would be collected from members in January of the following year. The Membership and Risk Management Committee would be notified of all members that were fined for failing to complete connectivity testing.

In the event that any member fails to complete connectivity testing for two successive years, the fine that would be imposed at that time would be $20,000. Failure to complete testing for more than two successive years would result

[1] 15 U.S.C. 78s(b)(1).

[2] The NSCC amendment proposes to amend NSCC Rule 48, Section 1, to increase the maximum disciplinary fine for a single offense from $10,000 to $20,000.

[3] The Commission has modified the text of the summaries prepared by DTC, FICC, and NSCC.

[4] The Federal Reserve, Office of the Comptroller of the Currency, and the Commission issued ''Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.'' [68 FR 17809 (April 11, 2003)]. This document provided guidelines that required core clearing and settlement organizations, such as DTC, FICC, and NSCC, and others in the financial industry to manage business continuity capabilities. DTC, FICC, and NSCC developed their testing of Top Tier firms based on the guidelines outlined in the white paper.

[5] Pursuant to DTC Rule 2, ''Participants and Pledgees,'' participants must furnish, upon DTC's request, information sufficient to demonstrate operational capability. In addition, DTC Rule 21, ''Disciplinary Sanctions,'' allows DTC to impose fines on participants for any error, delay or other conduct detrimental to the operations of DTC.

Pursuant to GSD Rule 3, ''Responsibility, Operational Capability, and Other Membership Standards of Comparison-Only Members and Netting Members,'' the GSD may require members to fulfill operational testing requirements as the GSD may at any time deem necessary. Pursuant to MBSD Rule 1, Section 3 of Article III, all MBSD applicants and members agree to fulfill operational testing requirements and related reporting requirements that may be imposed to ensure the continuing operational capability of the applicant.

Pursuant to NSCC Rule 15, ''Financial Responsibility and Operational Capability,'' members must furnish to NSCC adequate assurances of their financial responsibility and operational capability as NSCC may at any time deem necessary. In addition, NSCC Rule 48, ''Disciplinary Procedures'', allows NSCC to impose a fine on participants for any error, delay, or other conduct that is determined to be detrimental to the operations of NSCC.

in disciplinary action, including potential termination of membership.

DTC, FICC, and NSCC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because the implementation of the proposals should help DTC, FICC, and NSCC to enforce compliance with their connectivity testing rules for business continuity purposes and as a result should better enable them to ensure the safeguarding of securities and funds which are in their custody or control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC, FICC, and NSCC do not believe that the proposed rule changes will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC, FICC, and NSCC have not solicited or received any written comments on these proposals. DTC, FICC, and NSCC will notify the Commission of any written comments they receive.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2005–04, SR–FICC–2005-10, and SR–NSCC–2005–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–DTC–2005–04, SR–FICC–2005–10, and SR–NSCC–2005–05. These file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal offices of DTC, FICC, and NSCC and on DTC's Web site at *http://www.dtc.org*, and on FICC's Web site at *http://www.ficc.com*, and on NSCC's Web site at *http://www.nscc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–DTC–2005–04, SR–FICC–2005–10, and SR–NSCC–2005–05 and should be submitted on or before August 5, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

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[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52045; File No. SR–NASD–2005–023]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Representation in Arbitration and Mediation

July 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), on February 9, 2005 and on July 8, 2005 (Amendment No. 1), the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD Dispute Resolution. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend Rule 10316 and to adopt Rule 10408 of the NASD Code of Arbitration Procedure (''Code''), to address attorney representation in arbitration and mediation.[3] Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

10316. Representation *in Arbitration* [by Counsel]

(a) Representation by a Party

Parties may represent themselves in an arbitration held in a United States hearing location. A member of a partnership may represent the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] These provisions will be renumbered as appropriate following Commission approval of the following proposed rule changes published on June 23, 2005: Revision of Customer Portion of Code of Arbitration Procedure, Exchange Act Rel. No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR–NASD–2003–1580); Revision of Industry Portion of Code of Arbitration Procedure, Exchange Act Rel. No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR–NASD–2004–011); and the NASD Arbitration Rules for Mediation Proceedings, Exchange Act Rel. No. 51855 (June 15, 2005), 70 FR 36440 (June 23, 2005) (SR–NASD–2004–013).

partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

(b) Representation by an Attorney

At any stage of an arbitration proceeding held in a United States hearing location, [A]*a*ll parties shall have the right to [representation by counsel at any stage of the proceedings.] *be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.*

(c) Qualification of Representative

Issues regarding the qualifications of a person to represent a party in arbitration are governed by applicable law and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the arbitration proceeding shall not be stayed or otherwise delayed pending resolution of such issues.

* * * * *

10408. Representative in Mediation

(a) Representation by Party

Parties may represent themselves in mediation held in a United States hearing location. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association.

(b) Representation by an Attorney

At any stage of a mediation proceeding held in a United States hearing location, all parties shall have the right to be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(c) Qualifications of Representatives

Issues regarding the qualifications of a person to represent a party in mediation are governed by applicable law and may be determined by an appropriate court or other regulatory agency. In the absence of a court order, the mediation proceeding shall not be delayed pending resolution of such issues.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background. NASD Dispute Resolution believes a rule is needed to address the issue of multi-jurisdictional practice of law in arbitration and mediation.[4] The multi-jurisdictional practice of law occurs when attorneys, licensed in one United States jurisdiction, practice law in a jurisdiction in which they are not licensed. In the area of arbitration, for example, it is common for an attorney licensed to practice law in one state to represent a client in an arbitration proceeding in another state in which the attorney is not licensed. Although this practice is common, it can be a violation of state unauthorized practice of law provisions. Until recently, most states had taken no action against this practice. However, recent case law developments suggest that some states may be reconsidering this position. For example, three state court rulings have found that an out-of-state attorney providing representation in an arbitration proceeding is engaging in the practice of law in the state in which the proceeding occurs, and that it is a violation of the state's unauthorized practice of law statute to participate in such a proceeding without being licensed in that jurisdiction.[5]

In light of these developments and the trend toward multi-jurisdictional practice, the American Bar Association (ABA) amended its Model Rule of Professional Conduct 5.5 (Model Rule 5.5) to permit an attorney to represent a client in a United States jurisdiction in which he or she is not licensed without violating the jurisdiction's unauthorized practice of law rules, so long as the representation is related to an arbitration or medication.[6] While Model Rule 5.5 establishes a new standard for certain types of legal activity, it can be enforced only if a state adopts it into law. Fourteen states have either adopted Model Rule 5.5 or a similar version of the rule.[7] Other states have adopted a temporary practice rule, similar to Model 5.5, which allows an attorney not licensed in a state to provide certain types of legal services in the state on a limited basis.[8] In those states where a temporary practice rule has yet to be adopted, the state bar associations appear willing to grant requests from attorney not licensed in those states to represent clients in an arbitration in those states.[9]

Representation by an Attorney in NASD Arbitration Forum. The proposed rule change would clarify that a party may be represented by an attorney admitted to practice by the United States Court, the highest court of any

[4] The proposed rule change is intended to address the issue of multi-jurisdictional practice of law by attorneys. The proposed rule change does not address the issue of representation by non-attorneys in arbitration and medication cases.

[5] *See Birbrower, Montalbano, Condo & Frank* v. *Superior Court,* 949 P.2d 1 (Cal. 1998); *see also Florida Bar* v. *Rapoport,* 845 Sα. 2d 874, 2003 Fla. LEXIS 250 (Fla. 2003) and *Disciplinary Council* v. *Alexicole, Inc.,* et al., 2004 Ohio LEXIS 3032 (Ohio 2004).

[6] Model Rule 5.5, as amended, would allow a United States lawyer, admitted in one United States jurisdiction, to engage in certain types of legal activity in another United States jurisdiction where he is not licensed to practice, without being deemed to be engaging in the unauthorized practice of law. As amended, Model Rule 5.5 states that a lawyer may provide legal services on a temporary basis in an out-of-state jurisdiction that: (1) Are undertaken in association with a lawyer who is admitted to practice in the jurisdiction and who actively participates in the matter; (2) are in or reasonably related to a pending or potential proceeding before a tribunal in the jurisdiction or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized; (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in the jurisdiction or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or (4) are not within paragraphs 2 or 3, and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice. This rule is sometimes referred to as the temporary practice rule.

[7] Seven additional states have recommendations pending in their states' highest courts to adopt a rule identical or similar to Rule 5.5. American Bar Association, *Commission on Multijurisdictional Practice, State Implementation of ABA Model Rule 5.5* (visited Jan. 31, 2005) *http://www.abanet.org/cpr/mjp-home.html.*

[8] The laws of Michigan and Virginia specifically authorize occasional or incidental practice of out-of-state lawyers. *See* Mich. Comp. Law Ann. sec. 600.916 and Va. State Bar Rule, Pt. 6, sec. 1(C).

[9] *See* Philadelphia Bar Association, Ethics Opinions, Opinion 2003–13 (December 2003) (advising an attorney not licensed in Pennsylvania that he could conduct an arbitration in Philadelphia).

state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.[10] The proposed rule change also explicitly states that, as is currently permitted, parties may represent themselves in NASD arbitration proceedings.

The proposed rule change states that a party has the right to be represented by an attorney at law admitted to practice before the United States Supreme Court, the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. Representation by an attorney is not required under this proposal. However, NASD believes that representation by an attorney will protect the public and benefit investors by ensuring that a party's representative has a minimum level of skill, training, and character to provide effective representation in arbitration.[11]

Under the proposed rule change, attorneys could represent a client in an NASD arbitration or mediation, held in any United States hearing location, regardless of the jurisdiction in which the attorneys are licensed. The attorney's qualifications to participate as representatives in a jurisdiction in which they are not licensed would be subject to the applicable law of that jurisdiction. NASD believes the proposed rule change would assist attorneys in addressing the issue of multi-jurisdictional practice without encroaching on the states' rights to determine what activities violate the states' unauthorized practice of law provisions. The proposed rule change is not intended to prevent a state from deciding that an out-of-state attorney may have violated a state's unauthorized practice of law provision by representing a party in an NASD arbitration or mediation. It is intended, however, to reflect current practice in the forum, which, based on experience, shows that the level of knowledge, training and skill of an attorney affects the outcome of an arbitration or medication proceeding more than the jurisdiction from which the attorney received his license to practice.

Further, NASD believes that the proposed rule change sets a standard of practice for the arbitration forum that is consistent with the other rules and proceedings of NASD. Rule 9141(b) of the NASD Code of Procedure states, in relevant part, that a person may be represented in any disciplinary proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.[12]

Moreover, the SEC (as well as other federal agencies) also has a similar practice rule. Rule 102(b) of the SEC Rules of Practice states that, in any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State.[13]

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change clarifies a standard of practice in its arbitration forum, which will foster uniformity and consistency in arbitration proceedings. As a result, NASD believes that the proposed rule change will enhance the administration and operation of the arbitration process, thereby protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–023 on the subject line.

Paper Comments

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–023. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[10] The proposed rule change would apply only to hearing locations in the United States, which include any commonwealth, territory, or possession of the United States.

[11] While not addressed in the proposed rule change, the NASD continues to be concerned about the on-going problems that are caused by the practice of non-attorney representatives in the forum. These problems, which have been well documented, may have negative implications for parties in arbitration. *See Securities Arbitration Reform, Report of the Arbitration Policy Task Force to the Board of Governors, National Association of Securities Dealers, Inc.* (January 1996); *see also Report of the Securities Industry Conference on Arbitration on Representation of Parties in Arbitration by Non-Attorneys,* 22 Fordham Urb. L. J. 507 (1995).

[12] This rule has been enforced in NASD Enforcement proceedings. In two similar cases, a respondent's answer was stricken from the record because the respondent's representative had not indicated that he was a licensed attorney. *See* NASDR Office of the Hearing Officers, OHO Order 97–15 (C01970032); *see also* OHO Order 98–10 (C10970176).

[13] *See* SEC Rules of Practice, 17 CFR § 201.102(b) (2004).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–023 and should be submitted on or before August 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–14444 7–20–05; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52046A; File No. SR–NASD–2004–183]

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Filing of Proposed Rule and Amendment No. 1 Thereto Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities; Corrected

July 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), the proposed rule as described in Items I, II, and III below, which Items have been prepared by NASD. On July 8, 2005, NASD filed Amendment No. 1 to the proposed rule.[3] The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment clarified the rule's text and provided additional explanations of that text.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule

NASD is proposing to adopt a new rule, proposed NASD Rule 2821, to create recommendation requirements (including a suitability obligation), principal review and approval requirements, and supervisory and training requirements tailored specifically to transactions in deferred variable annuities. The text of the proposed rule is available on NASD's Web site (*http://www.nasd.com*), at NASD's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

1. Purpose

NASD is proposing a new rule, proposed Rule 2821, that would impose specific sales practice standards and supervisory requirements on members for transactions in deferred variable annuities.[4] NASD has been concerned about deferred variable annuity transactions for some time. In part, this concern stems from the complexities of the products, which can cause confusion both for persons associated with members who sell deferred variable annuities and for customers who purchase or exchange them.

Deferred variable annuities are hybrid investments containing both securities and insurance features. They offer choices among a number of complex contract features (*e.g.*, deferred variable annuity contracts may offer various types of death benefits, rebalancing features, dollar cost averaging options, and optional riders such as a guaranteed minimum income benefit, estate protection enhancements, or long-term care insurance, in addition to a range of choices among investment options).[5] The amount that will accumulate and be paid to the investor pursuant to a deferred variable annuity will fluctuate depending on the investment options that the investor chooses. Investors also can be subject to the following fees or charges: *Surrender charges* (which the investor owes if he or she withdraws money from the annuity before a specified period); *mortality and expense risk charges* (which the insurance company charges for the insurance risk it takes under the contract); *administrative fees* (which are used for recordkeeping and other administrative expenses); *underlying fund expenses* (which relate to the investment options); and *charges for special features and riders*. Moreover, an investor's withdrawal of earnings before he or she reaches the age of 59½ is generally subject to a 10-percent penalty under the Internal Revenue Code.

In addition to the complexity of the product—and perhaps, in part, because of it—NASD examinations and investigations have uncovered various questionable sales practices. In some instances, associated persons sold deferred variable annuities to elderly customers for whom such long-term, illiquid products were not suitable. In others, associated persons sold deferred variable annuities without explaining (and, in some cases, without knowing) the characteristics of the products. On a number of occasions, associated persons recommended that customers exchange one deferred variable annuity for another without ensuring that such exchanges were beneficial for their customers or properly disclosing costs. NASD also determined that a number of firms had, in general, failed to adequately train and supervise associated persons regarding deferred variable annuity sales.

When NASD first began noticing these problems, it acted quickly and persistently to address them on several fronts. NASD issued *Notices to Members* that provided guidelines and reminders

[4] In general, a variable annuity is a contract between an investor and an insurance company, whereby the insurance company promises to make periodic payments to the contract owner or beneficiary, starting immediately (an immediate variable annuity) or at some future time (a deferred variable annuity). *See* Joint SEC and NASD Staff Report on Broker-Dealer Sales of Variable Insurance Products (June 2004) (''Joint Report''); NASD *Notice to Members* 99–35 (May 1999). The proposed rule focuses exclusively on transactions in *deferred* variable annuities. NASD recognizes that transactions involving immediate variable annuities have begun to increase recently, and NASD will continue to monitor sales practices relating to these products. Currently, however, deferred variable annuities make up the majority of variable annuity transactions. Moreover, to date, most of the problems associated with transactions in variable annuities that NASD has uncovered involve the purchase or exchange of deferred variable annuities.

[5] *See* Joint Report, *supra*, note 4.

about members' suitability and supervisory obligations regarding variable annuities.[6] NASD also issued *Investor Alerts* and *Regulatory & Compliance Alerts*, strengthened its examination program and brought a number of significant enforcement actions concerning deferred variable annuities.[7]

Despite these efforts, problematic sales practices continued. At present, NASD is still seeing some of the same problems that it first noticed in the late 1990s. In June 2004, NASD and the SEC issued a Joint Report on examination findings regarding broker-dealer sales of variable insurance products.[8] As discussed in the Joint Report, recent NASD and SEC examinations uncovered a number of problem areas, including suitability, disclosure, supervision, books/records and training. In addition to the NASD and SEC examinations discussed in the Joint Report, NASD's Variable Annuity Task Force, an organization-wide initiative, is in the process of conducting special exams of various members and, although the analyses of those exams are not complete, NASD has discovered problems similar to those reported in the Joint Report at some members. Moreover, NASD has received a number of customer complaints indicating that the customers did not understand the unique features of the deferred variable annuities and raising suitability concerns based on the customers' investment objectives and liquidity needs.

In light of these issues, NASD determined that it needed to create a rule specifically covering deferred variable annuities. In general, NASD's guidelines on deferred variable annuity transactions, developed with substantial input from industry participants and published in *Notice to Members* 99–35 (May 1999), served as the basis for the proposed rule.

The proposed rule would apply to the purchase or exchange of a deferred variable annuity and the subaccount allocations.[9] The proposed rule would not apply to reallocations of subaccounts made after the initial purchase or exchange of a deferred variable annuity. However, other NASD rules would continue to apply. For instance, NASD's suitability rule, Rule 2310, would apply to any recommendations to reallocate subaccounts.

The proposed rule also would not apply to deferred variable annuities sold to certain tax-qualified, employer-sponsored retirement or benefit plans but would apply to the purchase or exchange of deferred variable annuities to fund IRAs. In part, NASD determined not to exclude IRAs from the proposal's coverage because, unlike transactions for tax-qualified, employer-sponsored retirement or benefit plans, investors funding IRAs are not limited to the options provided by a plan. However, even in the case of a tax-qualified, employer-sponsored retirement or benefit plan, if a member makes recommendations to individual plan participants regarding a deferred variable annuity, the proposed rule would apply as to the individual plan participants to whom the member makes such recommendations (but would not apply as to the plan sponsor, trustee or custodian regarding the plan-level selection of investment vehicles and options for such plans).

The proposed rule has four main requirements. First, the proposal has requirements governing recommendations, including a suitability obligation, specifically tailored to deferred variable annuity transactions.[10] Second, the proposal includes various principal review and approval obligations.[11] The proposal would require that a registered principal review and approve the transaction prior to transmitting a customer's application for a deferred variable annuity contract to the issuing insurance company for processing.[12] However, the timeframe for principal review and approval would depend on whether the principal's review occurs before or after the customer provides the member with the purchase payment for the deferred variable annuity. That is, if principal review occurs after payment has been made, additional rules may be implicated. NASD Rule 2820(d), for instance, requires members to promptly transmit the application and the purchase payment for a variable contract to the issuing insurance company. Similarly, various financial responsibility obligations under SEC Rules 15c3–1 and 15c3–3 require certain members to promptly transfer/forward funds. On the other hand, if principal review and approval occurs before payment has been made, NASD Rule 2820(d) and SEC Rules 15c3–1 and 15c3–3 would not affect the principal review and approval obligations under the proposed new rule.

Third, members would be required to establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in the proposed rule.[13] Pursuant to the proposed supervisory-procedure requirements, members would need to establish certain standards that are reasonably designed to ensure that transactions in deferred variable annuities are appropriately supervised. NASD also emphasizes that the member must have

[6] *See, e.g.*, NASD *Notice to Members* 99–35 (May 1999) (providing guidance to assist members in developing appropriate procedures relating to variable annuity transactions); *Notice to Members* 96–86 (Dec. 1996) (reminding members of their suitability obligations regarding variable annuity transactions).

[7] In 2001, NASD issued an *Investor Alert* entitled "Should You Exchange Your Variable Annuity?" highlighting important issues that investors should consider before agreeing to exchange a variable annuity. In 2002, NASD issued a *Regulatory & Compliance Alert*, entitled "NASD Regulation Cautions Firms for Deficient Variable Annuity Communications," that, among other things, discussed NASD's discovery of unacceptable sales practices regarding variable annuities. In another *Regulatory & Compliance Alert* in 2002, entitled "Reminder—Suitability of Variable Annuity Sales," NASD emphasized, in part, that an associated person must be knowledgeable about a variable annuity before he or she can determine whether a recommendation to purchase, sell or exchange the variable annuity is appropriate. In 2003, NASD issued an *Investor Alert*, entitled "Variable Annuities: Beyond the Hard Sell," which cautioned investors about certain inappropriate sales tactics and highlighted the unique features of these products. For a discussion of some of the disciplinary cases that NASD has brought involving deferred variable annuities, see Joint Report, *supra*, note 4.

[8] *See* Joint Report, *supra*, note 4.

[9] NASD notes that the proposed rule focuses on customer purchases and exchanges of deferred variable annuities, areas that, to date, have given rise to many of the problems NASD has uncovered. The proposed rule does not include requirements for customer sales of deferred variable annuities because NASD believes that such transactions are fully and adequately covered by Rule 2310, NASD's general suitability rule. Rule 2310 requires that, when recommending that a customer purchase, sell or exchange a security, an associated person determine whether the recommendation is suitable for the customer. In general, deferred variable annuities are suitable only as long-term investments and are inappropriate short-term trading vehicles. As part of any analysis under Rule 2310 regarding the suitability of a recommendation that a customer sell a deferred variable annuity, the associated person must consider significant tax consequences, surrender charges and loss of death or other benefits. As NASD emphasized in a *Regulatory & Compliance Alert* in 2002, entitled "Reminder—Suitability of Variable Annuity Sales," members and their associated persons "must keep in mind that the suitability rule applies to any recommendation to sell a variable annuity regardless of the use of the proceeds, including situations where the member recommends using the proceeds to purchase an unregistered product such as an equity-indexed annuity. Any recommendation to sell the variable annuity must be based upon the financial situation, objectives and needs of the particular investor." NASD, however, will continue to monitor customer sales of deferred variable annuities and will pursue additional rulemaking or other action as necessary.

[10] *See* proposed Rule 2821(b); and Part C, *infra*.

[11] *See* proposed Rule 2821(c).

[12] As part of his or her review, a principal would be required to consider all of the factors listed in section (c)(1) of the proposed rule.

[13] *See* proposed Rule 2821(d).

policies and procedures in place that are reasonably designed to ensure that an associated person promptly sends the original application or a copy thereof to a principal for review, consistent with the requirements of proposed Rule 2821(c).

Fourth, the proposal has a training component.[14] Members would be required to develop and document specific training policies or programs designed to ensure that associated persons who effect and registered principals who review transactions in deferred variable annuities comply with the requirements of the proposal and that they understand the material features of deferred variable annuities.

NASD will announce the effective date of the proposed rule in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 120 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. NASD believes that the proposed rule is consistent with the provisions of the Act noted above in that it will enhance members' compliance and supervisory systems and provide more comprehensive and targeted protection to investors in deferred variable annuities. As such, the proposed rule will decrease the likelihood of fraud and manipulative acts and increase investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Received From Members, Participants, or Others

The proposed rule was published for comment in NASD Notice to Members 04–45 (June 2004). A copy of the Notice to Members was submitted as part of the original rule filing as Exhibit 2a. NASD received 1,129 comments in response to the Notice. A copy of the index to comment letters received in response to the Notice was submitted as part of the original rule filing as Exhibit 2b (submitted in hard copy). Copies of the comment letters received in response to the Notice were submitted as part of the original rule filing as Exhibit 2c (submitted in hard copy). The overwhelming majority of commenters opposed the proposal. Fourteen commenters fully supported the proposal and an additional 20 commenters offered partial or qualified support for the proposal.

Most commenters questioned the need for the proposal described in the Notice, stating that the proposal is duplicative of existing rules and that NASD should simply enforce those existing rules. NASD disagrees. Certainly, NASD can and does vigorously pursue those who engage in misconduct, but after-the-fact enforcement actions simply do not appear to be sufficiently effective at combating the problems NASD has uncovered.

Moreover, the proposed rule does not merely aggregate existing requirements. The proposed rule is tailored to deferred variable annuities and addresses issues not currently covered by existing rules. For instance, the proposed rule explicitly requires that an associated person have reasonable grounds for believing that the customer has been informed of the material features of the deferred variable annuity.[15] The proposed rule describes the type of information that an associated person must consider in determining the suitability of an investment in a deferred variable annuity. The proposed rule highlights the important factors that registered principals must consider before approving a deferred variable annuity transaction. The proposed rule also requires members to provide training to associated persons and registered principals regarding the unique features of deferred variable annuities.

A number of commenters also questioned the need for point-of-sale disclosures, stating in particular that the transaction-specific, written-disclosure requirements proposed in the Notice were unhelpful and unworkable. NASD has not included the written-disclosure requirements contained in its Notice in the current proposed rule, but will continue to explore this issue and will separately consider whether to propose such requirements in the future. NASD notes, however, that proposed Rule 2821(b) (Recommendation Requirements) continues to provide, as in the Notice, that no member or associated person shall recommend to a customer the purchase or exchange of a deferred variable annuity unless the member or associated person has a reasonable basis to believe that, among other things, the customer has been informed of the material features of the deferred variable annuity.[16] This provision will promote increased customer awareness of the material terms and features of the deferred variable annuity, although, unlike the written-disclosure requirements contained in the Notice, the ''Recommendation Requirements'' do not prescribe the specific form of disclosure.[17] NASD further notes that the Commission has proposed a rule that would require point-of-sale disclosure of certain fee information regarding, among other products, variable annuities.[18] Numerous commenters argued that the timing of principal review in the Notice was unreasonable and could actually prohibit principals from thoughtfully reviewing transactions. The Notice stated that a principal had to review and approve the transaction no later than one business day following the date when the customer signed the application. NASD has modified the timing of principal review. The proposed rule now would require principal review and, if appropriate, approval before the member or person

[14] *See* proposed Rule 2821(e).

[15] *See* proposed Rule 2821(b)(1)(A). Pursuant to this requirement, the associated person should, at a minimum, highlight for the customer the following material features of the deferred variable annuity: (1) The surrender period; (2) potential surrender charge; (3) potential tax penalty if the customer sells or redeems the deferred variable annuity before he or she reaches the age of 59½; (4) mortality and expense fees; (5) investment advisory fees; (6) charges for and features of enhanced riders, if any; (7) the insurance and investment components of the deferred variable annuity; and (8) market risk. *Cf.* Joint Report, *supra*, note 4 (''Registered representatives should discuss with the customer all relevant facts such as fees and expenses * * *, the lack of liquidity of these products * * *, and market risk''); NASD *Notice to Members* 99–35 (May 1999) (same); *see also Larry Ira Klein*, 52 S.E.C. 1030, 1036 (1996) (''Klein's delivery of a prospectus to Towster does not excuse his failure to inform her fully of the risks of the investment package he proposed.'').

[16] *See* proposed Rule 2821(b)(1)(A).

[17] *See* proposed Rule 2821(b)(1)(A).

[18] *See* SEC Proposed Rule Regarding Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, Rel. Nos. 33–8358, 34–49148, IC–26341 (Jan. 29, 2004), 69 FR 6438 (Feb. 10, 2004); SEC Proposed Rule, Reopening of Comment Period and Supplemental Request for Comment Regarding Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, Rel. Nos. 33–8544, 34–51274, IC–26778 (Feb. 28, 2005), 70 FR 10521 (Mar. 4, 2005).

associated with the member transmits the customer's application for a deferred variable annuity contract to the issuing insurance company. NASD believes that this requirement provides members with some flexibility while at the same time ensuring that a principal reviews the application before a contract is issued.

NASD disagrees with those commenters who suggested that state-required ''free look'' periods make early principal review unnecessary. In general, a ''free look'' period allows the customer to terminate the contract without paying any surrender charges and receive a refund of the purchase payments or the contract value, as required by applicable state law. Free-look periods, which vary by state law, typically range from 10 to 30 days.

Allowing a suitability analysis, for instance, to be reviewed by a principal long after an insurance company issues a deferred variable annuity contract would be inconsistent with an adequate supervisory system (which must be reasonably designed to detect and prevent problematic sales). A delayed principal review would make it difficult for a member to quickly identify problematic trends, such as mini-replacement campaigns (a practice in which registered representatives exchange a high percentage of their customers' existing contracts for new contracts, in some cases to meet production requirements or to generate commissions). Allowing principal review to occur after a significant delay also would be contrary to the normal practice for review of transactions involving other types of investments. Moreover, NASD believes that members should contact customers as soon as possible if a principal discovers a problem with the transaction, and this prompt contact could not occur if the principal does not review the transaction for a prolonged period. Further, there may very well be disincentives to reject transactions as time elapses, especially if a contract has already been issued.[19] Finally, some customers may not be aware of or fully comprehend free-look periods. For these reasons, it would be inappropriate to allow for principal review beyond the period stated in the current proposed rule.

A number of commenters also called for the elimination of the principal review requirements for non-recommended transactions. Due to the complexity of the products, NASD believes that it is appropriate to require firms to review both recommended and non-recommended deferred variable annuity transactions. The proposed rule creates standards that will ensure that firms perform a consistent, baseline analysis of transactions, regardless of whether the particular transaction has been recommended, thereby enhancing investor protection for all customers. NASD, moreover, is aware of instances where associated persons have told their firms that deferred variable annuity transactions were not recommended in order to bypass their firms' compliance requirements for recommended or solicited sales. The proposed rule's principal-review requirements for non-recommended transactions should reduce the incentive for persons to engage in such conduct.

Finally, a number of commenters stated that the proposed rule should not apply to transactions involving tax-qualified, employer-sponsored retirement or benefit plans. After further analysis, NASD agrees with these commenters and has created an exception for transactions involving such plans under certain circumstances.

NASD emphasizes, however, that members should pay close attention to deferred variable annuity transactions in IRAs, which do not qualify for the proposed exception for tax-qualified, employer-sponsored retirement or benefit plans. A deferred variable annuity purchased for an IRA does not provide any additional tax deferred treatment of earnings beyond the treatment provided by the IRA itself. Moreover, unlike transactions for tax-qualified, employer-sponsored retirement or benefit plans, investors funding IRAs are not limited to the options provided by the plan. Sales of deferred variable annuities to unsophisticated customers in IRAs are of particular concern to NASD, especially in light of certain fees and charges associated with many deferred variable annuities. Thus, principals must ensure that the deferred variable annuity's features other than tax deferral make the purchase of the deferred variable annuity for the IRA appropriate. In this regard, members should note that paragraph (b)(1)(C) of the proposed rule requires associated persons and paragraphs (c)(1)(A) and (d)(1) of the proposed rule require principals to determine whether the customer appears to have a need for the features of a deferred variable annuity as compared with other investment vehicles.[20]

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule, or

(B) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–183 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2004–183. This file

[19] It has come to NASD's attention that some issuing insurance companies process applications for deferred variable annuities in a very short time period (one or two days). In addition, certain rules require relatively quick processing of certain aspects of deferred variable annuities. *See* SEC Rule 22c–1(c) under the Investment Company Act of 1940.

[20] NASD notes that, in the context of a customer's *purchase* of a deferred variable annuity, paragraphs (b)(1)(C), (c)(1)(A) and (d)(1) of proposed Rule 2821 do not require members to perform a side-by-side comparison of the deferred variable annuity with other investment vehicles. Instead, these provisions require associated persons and principals to make reasonable efforts to ensure that the customer has some need for the unique features of the deferred variable annuity (*e.g.*, tax-deferred growth, a guaranteed future income stream, and/or death benefit protection). This, of course, might necessitate a general comparison with other types of investment products (if the customer does not need the insurance feature or tax deferral, for instance, then another product might be more appropriate for the customer, depending on his or her objectives and financial situation and needs), but it would not have to be a side-by-side comparison with other investment vehicles. A side-by-side comparison of two deferred variable annuity contracts being *exchanged* (or at least a side-by-side comparison of their material features, *see, e.g.*, the factors discussed *supra* at note 15) would be necessary, however.

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with the Commission, and all written communications relating to the proposed rule between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–9303. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–183 and should be submitted on or before August 11, 2005.

V. Conclusion

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52031; File No. SR–NYSE–2002–19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Customer Portfolio and Cross-Margining Requirements

July 14, 2005.

I. Introduction

On May 13, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'' filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, a proposed rule change seeking to amend its rules, for certain customer accounts, to allow member organizations to margin listed, broad-based, market index options, index warrants, futures, futures options and related exchange-traded funds according to a portfolio margin methodology. The NYSE seeks to introduce the proposed rule as a two-year pilot program that would be made available to member organizations on a voluntary basis.

On August 21, 2002, the NYSE field Amendment No. 1 to the proposed rule change.[3] The Proposed rule change and Amendment No. 1 were published in the **Federal Register** On October 8, 2002.[4] The Commission received three comment letters in response to the October 8, 2002 **Federal Register** notice.[5] On June 21, 2004, the Exchange field Amendment No. 2 to the proposed rule change.[6] The proposed rule change and Amendment Nos. 1 and 2 were published in the **Federal Register** on December 27, 2004.[7] The Commission received ten comment letters in response to the December 27, 2004 **Federal Register** notice.[8]

On March 18, 2005, the Exchange filed Amendment No. 3 [9] to the proposed rule change. The proposed rule change and Amendment Nos. 1, 2 and 3 were published in the **Federal Register** on May 3, 2005.[10] The Commission received two comments in response to the May 3, 2005 **Federal Register** notice.[11]

The comment letters and the Exchange's responses to the comments [12] are summarized below. This Order approves the proposed rule, as amended.[13]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to T.R. Lazo, Senior Special Counsel, Division of Market Regulation, Commission, dated August 20, 2002 (''Amendment No. 1''). In Amendment No. 1, the NYSE made technical corrections to its proposed rule language to eliminate any inconsistencies between its proposal and the CBOE proposal pursuant to the the Rule 431 Committee's (''Committee'') recommendations. *See* Securities Exchange Act Release No. 45630 (March 22, 2002), 67 FR 15263 (March 29, 2002) File No. SR–CBOE–2002–03).

[4] *See* Securities Exchange Act Release No. 46576 (October 1, 2002) 67 FR 62843 (October 8, 2002).

[5] *See* letter from R. Allan Martin, President, Auric Trading Enterprises, Inc., to Secretary, Commission, dated October 9, 2002 (''Martin Letter''); Phupinder S. Gill, Managing Director and President, Chicago Mercantile Exchange Inc., to Jonathan G. Katz, Secretary, Commission, dated October 21, 2002 (''CME Letter''); and E-mail from Mike Ianni, Private Investor to *rule-comments@sec.gov*, dated November 7, 2002 (''Ianni E-mail'').

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation (''Division''), Commission, dated June 17, 2004 (''Amendment No. 2''). the NYSE filed Amendment No. 2 for the purpose of eliminating inconsistencies between the proposed NYSE and CBOE rules, and to incorporate certain substantive amendments requested by Commission staff.

[7] *See* Securities Exchange Act Release No. 50885 (December 20, 2004) 69 FR 77287 (December 27, 2004); *see also* Securities Exchange Act Release No. 50886 (December 20, 2004) 69 FR 77275 (December 27, 2004).

[8] *See* letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association (''FIA''), and Gerard J. Quinn, Vice President and Associate General Counsel, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, Commission, dated January 14, 2005 (''Wierzynski/Quinn Letter''); letter from Craig S. Donohue, Chief Executive Officer, Chicago Mercantile Exchange, to Jonathan G. Katz, Secretary, Commission, dated January 18, 2005 (''Donohue Letter''); letter from Robert C. Sheehan, Chairman, Electronic Brokerages Systems, LLC, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Sheehan Letter'') letter from William O. Melvin, Jr., President, Acorn Derivatives Management, to Jonathan G. Katz, Secretary, Commission, dated January 19, 2005 (''Melvin Letter''); letter from Margaret Wiermanski, Chief Operating & Compliance Officer, Chicago Trading Company, to Jonathan G. Katz, Secretary, Commission, dated January 20, 2005 (''Wiermanski Letter''); e-mail from Jeffrey T. Kaufmann, Lakeshore Securities, L.P., to Jonathan G. Katz, Secretary, Commission, dated January 24, 2005 (''Kaufmann Letter''); letter from J. Todd Weingart, Director of Floor Operations, Mann Securities, to Jonathan G. Katz, Secretary, Commission, dated January 25, 2005 (''Weingart Letter''); letter from Charles Greiner III, LDB Consulting, Inc., to Jonathan G. Katz, Secretary, Commission, dated January 26, 2005 (''Greiner Letter''); letter from Jack L. Hansen, Chief Investment Officer and Principal, The Clifton Group, to Jonathan G. Katz, Secretary, Commission, dated February 1, 2005 (''Hansen Letter''); and letter from Barbara Wierzynski, Executive Vice President and General Counsel, Futures Industry Association, and Ira D. Hammerman, Senior Vice President and General Counsel, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated March 4, 2005 (''Wierzynski/Hammerman Letter'').

[9] *See* Partial Amendment No. 3 (''Amendment No. 3''). The Exchange submitted this partial amendment, pursuant to the request of Commission staff, to remove the paragraph under which any affiliate of a self-clearing member organization could participate in portfolio margining, without being subject to the $5 million equity requirement.

[10] *See* Securities Exchange Act Release No. 51615 (April 26, 2005) 70 FR 22953 (May 3, 2005); *see also* Securities Exchange Act Release No. 51614 (April 26, 2005), 70 FR 22935 (May 3, 2005).

[11] *See* E-mail from Walter Morgenstern, Tradition-Asiel Securities, to *rule-comments@sec.gov*, dated May 16, 2005 (''Morgenstern E-mail''); and letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, The Options Clearing Corporation, to Jonathan G. Katz, Secretary, Commission, dated May 27, 2005 (''Navin Letter'').

[12] *See* letter from Grace B. Vogel, Executive Vice President, Member Firm Regulation, NYSE, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated June 27, 2005 (''NYSE Response'').

[13] By separate orders, the Commission also is approving a parallel rule filing by the CBOE (SR–CBOE–2002–03), and a related rule filing by the Options Clearing Corporation (''OCC'') (SR–OCC–2003–04). *See* Securities Exchange Act Release No. 52030 (July 14, 2005) and Securities Exchange Act Release No. 52032 (July 14, 2005). In addition, the staff of the Division of Market Regulation is issuing certain no-action relief related to the OCC's rule

filing. *See* letter from Bonnie Gauch, Attorney, Division of Market Regulation, Commission, to William H. Navin, General Counsel, OCC, dated July 14, 2005.

II. Description

a. Summary of Proposed Rule Change

The NYSE has proposed to amend its rules, for certain customer accounts, to allow member organizations to margin listed broad-based securities index options, warrants, futures, futures options and related exchange-traded funds according to a portfolio margin methodology. The NYSE seeks to introduce the proposed rule as a two-year pilot program that would be made available to member organizations on a voluntary basis.

NYSE Rule 431 generally prescribes minimum maintenance margin requirements for customer accounts held at members and member organizations. In April 1996, the Exchange established the Rule 431 Committee to assess the adequacy of NYSE Rule 431 on an ongoing basis, review margin requirements, and make recommendations for change. A number of proposed amendments resulting from the Committee's recommendations have been approved by the Exchange's Board of Directors since the Committee was established, including the proposed rule change.

b. Overview—Portfolio Margin Computation

(1) Portfolio Margin

Portfolio margining is a methodology for calculating a customer's margin requirement by ''shocking'' a portfolio of financial instruments at different equidistant points along a range representing a potential percentage increase and decrease in the value of the instrument or underlying instrument in the case of a derivative product. For example, the calculation points could be spread equidistantly along a range bounded on one end by a 10% increase in market value of the instrument and at the other end by a 10% decrease in market value. Gains and losses for each instrument in the portfolio are netted at each calculation point along the range to derive a potential portfolio-wide gain or loss for the point. The margin requirement is the amount of the greatest portfolio-wide loss among the calculation points.

Under the Exchange's proposed rule, a portfolio would consist of, and be limited to, financial instruments in the customer's account within a given broad-based US securities index class (*e.g.*, the S&P 500 or S&P 100).[14] The gain or loss on each position in the portfolio would be calculated at each of 10 equidistant points (''valuation points'') set at and between the upper and lower market range points. The range for non-high capitalization indices would be between a market increase of 10% and a decrease of 10%. High capitalization indices would have a range of between a market increase of 6% and a decrease of 8%.[15] A theoretical options pricing model would be used to derive position values at each valuation point for the purpose of determining the gain or loss. The amount of margin (initial and maintenance) required with respect to a given portfolio would be the larger of: (1) The greatest loss amount among the valuation point calculations; or (2) the sum of $.375 for each option and future in the portfolio multiplied by the contract's or instrument's multiplier. The latter computation establishes a minimum margin requirement to ensure that a certain level of margin is required from the customer. The margin for all other portfolios of broad based US securities index instruments within an account would be calculated in a similar manner.

Certain portfolios would be allowed offsets such that, at the same valuation point, for example, 90% of a gain in one portfolio may reduce or offset a loss in another portfolio.[16] The amount of offset allowed between portfolios would be the same as permitted under Rule 15c3–1a for computing a broker-dealer's net capital.[17]

Under the Exchange's proposed rule, the theoretical prices used for computing profits and losses must be generated by a theoretical pricing model that meets the requirements in Rule 15c3–1a.[18] These requirements include, among other things, that the model be non-proprietary, approved by a Designated Examining Authority (''DEA'') and available on the same terms to all broker-dealers.[19] Currently, the only model that qualifies under Rule 15c3–1a is the OCC's Theoretical Intermarket Margining System (''TIMS'').

(2) Cross-Margining

The Exchange's proposed rule permits futures and futures options on broad-based US securities indices to be included in the portfolios. Consequently, futures and futures options would be permitted offsets to the securities positions in a given portfolio. Operationally, these offsets would be achieved through cross-margin agreements between the OCC and the futures clearing organizations holding the customer's futures positions. Cross-margining would operate similar to the cross-margin program that the Commission and the Commodity Futures Trading Commission (''CFTC'') approved for listed options market-makers and proprietary accounts of clearing members organizations.[20] For determining theoretical gains and losses, and resultant margin requirements, the same portfolio margin computation program will be applied to portfolio margin accounts that include futures. Under the proposed rule, a separate cross-margin account must be established for a customer.

c. Margin Deficiency

Under the Exchange's proposed rule, account equity would be calculated and maintained separately for each portfolio margin account and a margin call would need to be met by the customer within one business day (T + 1), regardless of whether the deficiency is caused by the addition of new positions, the effect of an unfavorable market movement, or a combination of both. The portfolio margin methodology, therefore, would establish both the customer's initial and maintenance margin requirement.

d. $5.0 Million Equity Requirement

The Exchange's proposed rule would require a customer (other than a broker-dealer or a member of a national futures exchange) to maintain a minimum account equity of not less than $5.0 million. This requirement can be met by combining all securities and futures accounts owned by the customer and carried by the broker-dealer (as broker-dealer and futures commission merchant), provided ownership is identical across all combined accounts.

[14] A ''portfolio'' is defined in the rule as ''options of the same options class grouped with their underlying instruments and related instruments.''

[15] These are the same ranges applied to options market makers under Appendix A to Rule 15c3–1 (17 CFR 240.15c3–1a), which permits a broker-dealer when computing net capital to calculate securities haircuts on options and related positions using a portfolio margin methodology. *See* 17 CFR 240 15c3–1a(b)(1)(iv)(A); Letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Richard Lewandowski, Vice President, Regulatory Division, The Chicago Board Options Exchange, Inc. (Jan. 13, 2000).

[16] These offsets would be allowed between portfolios within the High Capitalization, Broad Based Index Option product group and the Non-High Capitalization, Board Based Index product group.

[17] 17 CFR 240.15c3–1a.

[18] *See* 17 CFR 250.15c3–1a(b)(1)(i)(B).

[19] *Id.*

[20] *See* Securities Exchange Act Release 26153 (Oct. 3, 1988), 53 FR 39567 (Oct. 7, 1988).

The proposed rule would require that, in the event account equity falls below the $5 million minimum, additional equity must be deposited within three business days (T + 3).

e. Net Capital

The Exchange's proposed rule would provide that the gross customer portfolio margin requirements of a broker-dealer may at no time exceed 1,000 percent of the broker-dealer's net capital (a 10:1 ratio), as computed under Rule 15c3–1.[21] This requirement is intended to place a ceiling on the amount of portfolio margin a broker-dealer can extend to its customers.

f. Internal Risk Monitoring Procedures

The Exchange's proposed rule would require a broker-dealer that carries portfolio margin accounts to establish and maintain written procedures for assessing and monitoring the potential risks to capital arising from portfolio margining.

g. Margin at the Clearing House Level

The OCC will compute clearing house margin for the broker-dealer using the same portfolio margin methodology applied at the customer level. The OCC will continue to require full payment for all customer long option positions. These positions, however, would be subject to the OCC's lien. This would permit the long options positions to offset short positions in the customer's portfolio margin account. In conjunction with the Exchange's rule proposal, the OCC proposed amending OCC Rule 611 and establishing a new type of omnibus account to be carried at the OCC and known as the ''customer's lien account.'' [22] In order to unsegregate the long option positions, the Commission staff would have to grant certain relief from some requirements of Commission Rules 8c–1, 15c2–1, and 15c3–3.[23] The OCC requested such relief on behalf of its members.[24]

[21] 17 CFR 240.15c3–1.

[22] *See* SR–OCC–2033–04, Securities Exchange Act Release No. 51330 (March 8, 2005). As noted above, the Commission is approving the OCC's rule filing. *See* Securities Exchange Act Release No. 52030 (July 14, 2005).

[23] 17 CFR 240.8c–1, 17 CFR 240.15c2–1 and 17 CFR 240.15c3–3, respectively.

[24] *See* Letter from William H. Navin, Executive Vice President, General Counsel, and Secretary, The Options Clearing Corporation, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated January 13, 2005. As noted above, the staff of the Division of Market Regulation is issuing a no-aciton letter providing such relief. *See* letter from Bonnie Gauch, Attorney, Division of Market Regulation, Commission, to William H. Navin, General Counsel, OCC, dated July 14, 2005.

h. Risk Disclosure Statement and Acknowledgement

The Exchange's proposed rule would require a broker-dealer to provide a portfolio margin customer with a written risk disclosure statement at or prior to the initial opening of a portfolio margin account. This disclosure statement would highlight the risks and describe the operation of a portfolio margin account. The disclosure statement would be divided into two sections, one dealing with portfolio margining and the other with cross-margining. The disclosure statement would note that additional leverage is possible in an account margined on a portfolio basis in relation to existing margin requirements. The disclosure statement also would describe, among other things, eligibility requirements for opening a portfolio margin account, the instruments that are allowed in the account, and when deposits to meet margin and minimum equity requirements are but. Further, there would be a summary list of the special risks of a portfolio margin account, including the increased leverage, time frame for meeting margin calls, potential for involuntary liquidation if margin is not received, inability to calculate future margin requirements because of the data and calculations required, and the OCC lien on long option positions. The risks and operation of the cross-margin account are outlined in a separate section of the disclosure statement.

Further, at or prior to the time a portfolio margin account is initially opened, the broker-dealer would be required to obtain a signed acknowledgement concerning portfolio margining from the customer. A separate acknowledgement would be required for cross-margining. The acknowledgements would contain statements to the effect that the customer has read the disclosure statement and is aware of the fact that long option positions in a portfolio margin account are not subject to the segregation requirements under the Commission's customer protection rules, and would be subject to a lien by the OCC.

An additional acknowledgement form would be required for a cross-margin account. It would contain similar statements as well as statement to the effect that the customer is aware that futures positions are being carried in a securities account, which would make them subject to the Commission's customer protection rules, and Securities Investor Protection Act of 1970 (''SIPA'') [25] in the event the broker-dealer becomes financially insolvent. The Exchange would prescribe the format of the written disclosure statements and acknowledgements, which would allow a broker-dealer to develop its own format, provided the acknowledgement contains substantially similar information and is approved by the Exchange in advance.

i. Rationale for Portfolio Margin

Theoretical options pricing models have become widely utilized since Fischer Black and Myron Scholes first introduced a formula for calculating the value of a European style option in 1973.[26] Other formulas, such as the Cox-Ross-Rubinstein model have since been developed. Option pricing formulas are now used routinely by option market participants to analyze and manage risk. In addition, as noted, a portfolio margin methodology has been used by broker-dealers since 1994 to calculate haircuts on option positions for net capital purposes.[27]

The Board of Governors of the Federal Reserve System (the ''Federal Reserve Board'' or ''FRB'') in its amendments to Regulation T in 1998 permitted SROs to implement portfolio margin rules, provided they are approved by the Commission.[28]

Portfolio margining brings a more risk sensitive approach to establishing margin requirements. For example, in a diverse portfolio some positions may appreciate and others depreciate in response to a given change in market prices. The portfolio margin methodology recognizes offsetting potential changes among the full portfolio of related instruments. This links the margin required to the risk of the entire portfolio as opposed to the

[25] 15 U.S.C. 78aaa *et seq.*

[26] *See* Securities Exchange Act Release No. 34–38248 (Feb. 6, 1997), 62 FR 6474 (Feb. 12, 1997) (discussing the development of the options pricing approach to capital); *see also* Securities Exchange Act Release No. 33761 (March 15, 1994), 59 FR 13275 (March 21, 1994).

[27] *See* letter from Brandon Becker, Director, Division, Commission, to Mary Bender, First Vice President, Division of Regulatory Services, CBOE, and Timothy Hinkes, Vice President, OCC, dated March 15, 1994; *see also* ''Net Capital Rule,'' Securities Exchange Act Release No. 38248 (February 6, 1997), 61 FR 6474 (February 12, 1997).

[28] *See* Federal Reserve System, ''Securities Credit Transactions; Borrowing by Brokers and Dealers''; Regulations G, T, U and X; Docket Nos. R–0905, R–0923 and R–0944, 63 FR 2806 (January 16, 1998). More recently, the FRB encouraged the development of a portfolio margin approach in a letter to the Commission and the CFTC delegating authority to the agencies to jointly prescribe margin regulations for security futures products. *See* letter from the FRB to James E. Newsome, Acting Chairman, CFTC, and Laura S. Unger, Acting Chairman, Commission, dated March 6, 2001.

individual positions on a position-by-position basis.

Professional investors frequently hedge listed index options with futures positions. Cross-margining would better align their margin requirements with the actual risks of these hedged positions. This could reduce the risk of forced liquidations. Currently, an option (securities) account and futures account of the same customer are viewed as separate and unrelated. Moreover, an option account currently must be liquidated if the risk in the positions has increased dramatically or margin calls cannot be met, even if gains in the customer's futures account offset the losses in the options account. If the accounts are combined (*i.e.* cross-margined), unnecessary liquidation may be avoided. This could lessen the severity of a period of high volatility in the market by reducing the number of liquidations.

III. Summary of Comments Received and NYSE Response

The Commission received a total of 15 comment letters to the proposed rule change.[29] The comments, in general, were supportive. One commenter stated that ''the NYSE's efforts to expand the use of portfolio margining systems—as opposed to strategy-based systems— as an enlightened and decidedly forward looking policy.'' [30] Some commenters, however, recommended changes to specific provisions of the proposed rule change.

Seven of the comment letters received specifically objected to the $5.0 million equity requirement.[31] Three commenters noted that the requirement blocks certain large institutions from participating in portfolio margining because these institutions hold assets as a custodian bank and would generally not hold $5.0 million in an account with a broker-dealer.[32] One commenter recommended reducing the equity requirement to $2.0 million.[33] Four commenters raised the issue that securities index options will be at a disadvantage compared with economically similar CFTC regulated index futures and options, because futures accounts have no minimum equity requirement.[34]

The Exchange believes that the comments directed at the $5.0 million have validity, especially with respect to certain types of accounts that must hold assets at a custodial bank. The Exchange intends to further consider this issue, through the Rule 431 Committee, and seek alternative methods for meeting the minimum equity requirement.[35]

Two commenters stated that other products should be eligible for portfolio margining.[36] Two commenters stated that other risk-based algorithms, such as SPAN, that are recognized by other clearing organizations should be permitted for calculating the portfolio margin requirement, in addition to the OCC's TIMS.[37] The Exchange noted that it is working (through the Rule 431 Committee) with an SIA subcommittee to explore the expansion of portfolio margining to additional products and participants. Finally, the NYSE stated that the comments received should not delay implementation of the proposed rule change.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[38] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [39] in particular, in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest. The Commission notes that the proposed portfolio margin rule change is intend to promote greater reasonableness, accuracy and efficiency with respect to Exchange margin requirements for complex listed securities index option strategies. The Commission further notes that the cross-margining capability with related index futures positions in eligible accounts may alleviate excessive margin calls, improve cash flows and liquidity, and reduce volatility. Moreover, the Commission notes that approving the proposed rule change would be consistent with the FRB's 1998 amendments to Regulation T, which sought to advance the use of portfolio margining.

Under the proposed rule changes, the Commission notes that a broker-dealer choosing to offer portfolio margining to its customers must employ a methodology that has been approved by the Commission for use in calculating haircuts under Rule 15c3–1a. As stated above, currently, TIMS is the only approved methodology. While some commenters recommended expanding the choice of models, the Commission believes that requiring a broker-dealer to use a model that qualifies for calculating haircuts under Commission Rule 15c3–1a maintains a consistency with the Commission's net capital rule and across potential portfolio margin pricing models. As a result, portfolio margin requirements would vary less from firm to firm. The Commission notes, however, that like Rule 15c3–1a, the proposed rule permits the use of another theoretical pricing model, should one be developed in the future.[40]

The Commission notes the objections of certain commenters to the $5 million minimum equity requirement. The Commission believes that the requirement circumscribes the number of accounts able to participate and adds safety in that such accounts are more likely to be of significant financial means and investment sophistication.

Finally, the Commission notes that several commenters recommended expanding the products eligible for portfolio margining. The Exchange's proposed rule limits the instruments eligible for portfolio margining to listed products base on broad-based US securities indices, which tend to be less volatile than narrow-based indices and non-index equities. The Commission believes this limitation is appropriate for the pilot program, which should serve as a first step toward the possible expansion of portfolio margining to other classes of securities.

V. Conclusion

It is therefore ordered, pursuant to seciton 19(b)(2) of the Act,[41] that the proposed rule change (File No. SR–NYSE–2002–19), as amended, is approved on a pilot basis to expire on July 31, 2007.

[29] *See supra* notes 5, 8 and 11.

[30] *See* Gill CME Letter.

[31] *See* Ianni Letter; Weingart Letter; Wiermanski Letter; Hansen Letter; Greiner Letter; Martin Letter; and Melvin Letter.

[32] *See* Weingart Letter; Wiermanski Letter; and Melvin Letter.

[33] *See* Martin Letter.

[34] *See* Weingart Letter; Wiermanski Letter; Hansen Letter; and Sheehan Letter.

[35] *See* NYSE Response.

[36] *See* Wiermanski Letter and Donohue Letter.

[37] *See* Donohue Letter and Gill CME Letter.

[38] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78f(b)(5).

[40] *See also* Securities Exchange Act Release No. 34–38248 (February 6, 1997), 62 FR 6474 (February 12, 1997) (discussing in Part II.A. the use of TIMS versus other pricing models).

[41] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–14316 Filed 7–20–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52034; File No. SR–OCC–2005–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Reducing Clearing Fees for Securities Option Contracts

July 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] notice is hereby given that on June 14, 2005, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Effective July 1, 2005, OCC will further reduce its discounted fee schedule for securities option contracts until further action by the Board of Directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The primary purpose of this rule change is to further reduce OCC's currently discounted clearing fees for securities option contracts until the Board of Directors determines otherwise.[3] Effective July 1, 2005, OCC's clearing fees for securities options will be:

Contracts/trade	Discounted fee effective July 1, 2005
1–500	$0.05/contract.
501–1,000	$0.04/contract.
1,001–2,000	$0.03/contract.
>2,000	$55.00 (capped).

The additional fee reduction recognizes the continued strong volume in securities options in 2005. OCC believes that this fee reduction will financially benefit clearing members and other market participants without adversely affecting OCC's ability to meet its expenses and maintain an acceptable level of retained earnings.

The discounted fees for new securities option products will be:

Month	Contracts/ trade	Discounted fee effective July 1, 2005
1	N/A	No Fee.
2	1–4,400	$0.01
	>4,400	$40.00
3	1–2,200	$0.02
	>2,200	$40.00
4	N/A	Regular Schedule.

OCC believes that the proposed rule change is consistent with Section 17A of the Act because it benefits clearing members by reducing clearing fees and allocates such fees among clearing members in a fair and equitable manner. The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) [5] thereunder because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OCC–2005–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OCC–2005–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[42] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] In addition, OCC is deleting charges for 56.0kb lines as they are no longer a supported communications protocol. Other changes made to the Schedule of Fees are of a technical or conforming nature.

[4] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com*.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2005–08 and should be submitted on or before August 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–3901 Filed 7–20–05; 8:45 am]

BILLING CODE 8010–01–P

6 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0456]

HorizonVentures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to Invivodata, Inc., 5615 Scott's Valley Drive, Suite #150, Scotts Valley, CA 95056. The financing is contemplated for operating expenses and for general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizon Ventures Fund I, L.P. and Horizon Ventures Advisors Fund I, L.P., both Associates of Horizon Ventures Fund II, L.P., own more than ten percent of Invivodata, Inc. Therefore, Invivodata, Inc., is considered an Associate of Horizon Ventures Fund II, L.P., as defined at 13 CFR 107.50 of the SBIC Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: June 28, 2005.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. 05–14339 Filed 7–20–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice of Order to Show Cause (Order 2005–7–14); Docket OST–2004–19877]

Application of GoJet Airlines, LLC for Certificate Authority

AGENCY: Department of Transportation.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that GoJet Airlines, LLC is fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than August 29, 2005.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2004–19877 and addressed to Department of Transportation Dockets, (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Lauralyn Remo, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: July 15, 2005.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05–14378 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice of Order to Show Cause (Order 2005–7–15); Docket OST–05–20492]

Application of Executive Jet Management, Inc. for Commuter Authority

AGENCY: Department of Transportation.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Executive Jet Management, Inc. is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier and issue to it a Commuter Air Carrier Authorization

DATES: Persons wishing to file objections should do so no later than August 29, 2005.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–05–20492 and addressed to the Department of Transportation Dockets (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Trace Atkinson, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–3176.

Dated: July 15, 2005.

Karan K. Bhatia,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 05–14379 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–16944]

Operating Limitations at Chicago O'Hare International Airport

ACTION: Notice of order to show cause and request for information.

SUMMARY: The FAA has issued an order to show cause, which solicits the views of interested persons on the FAA's tentative determination to extend through April 1, 2006, an August 18, 2004, order limiting the number of scheduled aircraft arrivals at O'Hare International Airport during peak operating hours. The text of the order to show cause is set forth in this notice.

DATES: Any written information that responds to the FAA's order to show cause must be submitted by August 1, 2005.

ADDRESSES: You may submit written information, identified by docket number FAA–2004–16944, by any of the following methods:

- Web site; *http://dms.dot.gov.* Follow the instructions for submitting information on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001. If sent by mail, information is to be submitted in two copies. Persons wishing to receive confirmation of receipt of their written submission should include a self-addressed stamped postcard.
- Hand Delivery: Docket Management System, Room PL–401, on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number FAA–2004–16944 for this notice at the beginning of the information that you submit. Note that the information received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Submissions to the docket that include trade secrets, confidential, commercial, or financial information, or sensitive security information will not be posted in the public docket. Such information will be placed in a separate file to which the public does not have access, and a note will be placed in the public docket to state that the agency has received such materials from the submitter.

FOR FURTHER INFORMATION CONTACT: Gerry Shakley, System Operations, Air Traffic Organization: telephone (202) 267–9424; facsimile (202) 267–7277; e-mail *gerry.shakley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Order To Show Cause

The Federal Aviation Administration (FAA) has tentatively determined that it will extend through April 1, 2006, the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport (O'Hare). In the absence of an extension, the August 2004 order would expire on October 29, 2005. This order to show cause invites air carriers and other interested persons to submit comments in Docket No. FAA–2004–16944 on this proposal to extend the duration of the August 2004 order.

If the FAA were to allow the August 2004 order to expire as presently scheduled, the FAA anticipates a return of the congestion-related delays that precipitated the voluntary schedule reductions and adjustments reflected in the August 2004 order. The FAA has adopted a rule limiting unscheduled flights at O'Hare,[1] but it has applied no limits on scheduled flights at O'Hare, other than the August 2004 order. In a separate docket, the FAA solicited public comment on a proposed rule that would limit the number of scheduled operations at O'Hare.[2] The comment period for the proposed rule ended on May 24, and the FAA and the Office of the Secretary of Transportation are evaluating the comments filed in that proceeding. Given the currently scheduled expiration of the August 2004 order, however, it is not possible for the FAA to complete its evaluation of the comments and to publish a final rule, if the FAA elects to do so, in time to afford air carriers their customary 90- to 120-day lead time to establish their operating schedules. The FAA expects that the extension of the August 2004 order will permit the order's expiration to coincide with the effective date of any final rule, if a rule is adopted.

The FAA's authority to extend the August 2004 order is the same as the authority cited in that order. The FAA proposes to extend the August 2004 order under the agency's broad authority in 49 U.S.C. 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use.

Background: On August 18, 2004, the FAA issued an order limiting the number of scheduled arrivals that air carriers conduct at O'Hare during peak hours. The August 2004 order followed a period during which O'Hare operated without any regulatory constraint on the number of aircraft operations, and O'Hare experienced significant congestion-related delay. According to the Bureau of Transportation Statistics, in November 2003, O'Hare ranked last among the nation's thirty-one major airports for on-time arrival performance, with on-time arrivals 57.26% of the time. O'Hare also ranked last in on-time departures in November 2003, yielding on-time departures 66.94% of the time. The data for December 2003 reflected a similar performance by O'Hare—ranking last with 60.06% of arrivals on time and 67.23% of departures on time. Despite the high proportion of delayed flights, when the air carriers published their January and February 2004 schedules in the Official Airline Guide, the schedules revealed that the air carriers intended to add still more flight operations to O'Hare's schedule.

In January 2004, the two air carriers conducting most of the scheduled operations at O'Hare—together accounting for about 88% of O'Hare's scheduled flights—agreed to a temporary 5% reduction of their proposed peak-hour schedules at the airport. When the voluntarily reduced schedules failed to reduce sufficiently O'Hare's congestion-related flight delays, the two air carriers agreed to a further 2.5% reduction of their scheduled peak-hour operations at O'Hare. The FAA captured the voluntary schedule reductions in FAA orders, and the orders were effective through October 30, 2004.

By the summer of 2004, it was apparent that the schedule reductions agreed to in the first half of the year, which were made by only two of the many air carriers conducting scheduled operations at O'Hare, were unlikely to be renewed after the orders expired on October 30, 2004. In the absence of a voluntary constraint, the industry's proposed schedules for November, as reported in the preliminary Official Airline Guide in July 2004, indicated that the number of scheduled arrivals during several hours would approach or exceed O'Hare highest possible arrival capacity. During one hour, the number of scheduled arrivals would have exceeded by 32% O'Hare's capacity under ideal conditions.

Therefore, the FAA invited all scheduled air carriers to an August 2004 scheduling reduction meeting to discuss overscheduling at O'Hare, voluntary schedule reductions, and retiming flights to less congested periods. The August 2004 meeting and subsequent negotiations led the FAA to issue the August 2004 order, which limited the number of scheduled arrivals conducted at U.S. and Canadian air carriers at O'Hare during peak operating hours. The order also defined opportunities for new entry and for growth by limited incumbent air carriers at O'Hare. The order took effect November 1, 2004, was previously extended on March 21, 2005, and in the absence of a further extension, it will expire on October 29, 2005.

The flight limits implemented by the August 2004 order have been effective. Delays have decreased, and customers have seen improved on-time arrival performance as a result of the depeaked

[1] 70 FR 39,610 (July 8, 2005).

[2] 70 FR 15,520 (Mar. 25, 2005).

flight schedules. For the period from November 2004 through June 2005, the average minutes of arrival delay decreased by approximately 27% when compared to the same period last year. This level of delay reduction is somewhat better than the 20% reduction in delays that the FAA's computer modeling anticipated. We attribute this primarily to weather conditions that were more favorable than average and to certain peak hours in which the arrivals actually scheduled have been below the hourly limit adopted in the August 2004 order.

Additionally, the longest arrival delays—those lasting more than one hour—have decreased by approximately 31%. Preliminary on-time arrival performance while the August 2004 order has been in effect indicates in improvement of over eight percentage points. As a result, O'Hare is now performing near the average for the rest of the National Airspace System, which is a dramatic improvement over the airport's bottom-tier performance during much of 2004.

Order to Show Cause: The FAA has issued a notice of proposed rulemaking to address appropriate limitations on scheduled operations at O'Hare. The comment period for the proposed rule closed on May 24, and the FAA and the Office of the Secretary of Transportation are evaluating the comments filed in the rulemaking docket and intend to make a final decision as soon as reasonably possible. The FAA cannot complete the rulemaking process sufficiently in advance of the August 2004 order's current expiration date, however, given the 90- to 120-day lead time the air carriers need to finalize plans for their winter scheduling season, as well as the complexity of the issues presented in the rulemaking.

To prevent a recurrence of overscheduling at O'Hare during the interim between the expiration of the August 2004 order on October 29, 2005, and the effective date of a rule, if a rule is adopted, the FAA tentatively intends to extend the August 2004 order. The limits on arrivals and the allocation of arrival authority embodied in the August 2004 order reflect the FAA's agreements with U.S. and Canadian air carriers. As a result, maintaining the order through the winter scheduling season constitutes a reasonable approach to preventing unacceptable congestion and delays at O'Hare. The August 2004 order, as extended, would expire on April 1, 2006.

Accordingly, the FAA directs all interested persons to show cause why the FAA should not make final its tentative findings and tentative decision to extend the August 2004 order through April 2, 2006, by filing their written views in Docket No. FAA–2004–16944 on or before August 1, 2005. The FAA is not soliciting views on the issues separately under consideration in the proposed rulemaking. Therefore, any submissions to the current docket should be limited to the issue of extending the August 2004 order.

Dated: Issued in Washington, DC, on July 18, 2005.

Rebecca MacPherson,

Assistant Chief Counsel for Regulation.

[FR Doc. 05–14461 Filed 7–18–05; 4:35 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review for Albany International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Albany County Airport Authority for Albany International Airport under provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Albany International Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before January 4, 2006.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 8, 2005. The public comment period ends September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Maria Stanco, New York Airports District Office, 600 Old Country Road, Suite 440, Garden City, New York 11530. Comments on the proposed noise compatibility programs should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Albany International Airport are in compliance with applicable requirements of part 150, effective July 8, 2005. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 4, 2006. This notice also announces the availability of this program for public review and comment.

Under section 103 of the Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

As an airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The Albany County Airport Authority submitted to the FAA on April 9, 2003, and supplemented with additional information, dated November 18, 2004, noise exposure maps, descriptions and other documentation. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 10(b) of the Act.

The FAA has completed its review of the noise exposure maps and related description submitted by the Albany County Airport Authority. The specific maps under consideration are the 2003 Noise Exposure Map (NEM–1) and the 2008 Noise Exposure Map (NEM–2), Flight Tracks (Exhibits D–3, 3a, 4, 4a), Monitoring sites (Exhibit C–1), and Noise Sensitive Sites (Exhibit 2–2). Additional description is contained in Chapter 3 (numbers of residents within noise contours) and Appendices C and D, including Fleet Mix (Table D–2), and Runway Use (Table D–3). The FAA has determined that these maps, tables and accompanying narrative for Albany International Airport are in compliance with the applicable requirements. This determination is effective on July 8, 2005. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator, which submitted these maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, which under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Albany International Airport, effective on July 8, 2005. Preliminary review of the submitted material indicated that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 4, 2006.

The FAA's detailed evaluation will be conducted under the provision of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land used and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors, all comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 440, Garden City, NY 11530.

Albany International Airport, Administration Building, Suite 200, Albany, NY 12211–1057.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Garden City, New York, July 8, 2005.

Philip Brito,

Manager, New York Airports District.

[FR Doc. 05–14336 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Polk County, IA

AGENCY: Federal Highway Administration (FHWA), DOT, City of Des Moines.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed roadway project in Polk County, Iowa. The planned EIS will evaluate potential transportation improvement alternatives for serving east-west travel between downtown Des Moines and the Highway 65 outer beltway.

FOR FURTHER INFORMATION CONTACT: Phillip E. Barnes, P.E., Division Administrator, Federal Highway Administration, 105 Sixth Street, Ames, Iowa 50010–6337, Phone: (515) 233–7300. Scott Dockstader, P.E., District Engineer, Iowa Department of Transportation, 1020 S. Fourth Street, Ames, Iowa 50010, Phone: (515) 239–1635. Jeb Brewer, P.E., City Engineer, City of Des Moines, 400 Robert D. Ray Drive, Des Moines, Iowa 50309–1891, Phone: (515) 237–2113.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document is available for free download from the Federal Bulletin Board (FBB). The FBB is a free electronic bulletin board service of the Superintendent of Documents, U.S. Government Printing Office (GPO).

The FBB may be accessed in four ways: (1) Via telephone in dial-up mode, or via the Internet through (2) telnet, (3) FTP, and (4) the World Wide Web.

For dial-in mode, a user needs a personal computer, modem, telecommunications software package, and a telephone line. A hard disk is recommended for file transfers.

For Internet access, a user needs Internet connectivity. Users can telnet or FTP to: *fedbbs.access.gpo.gov.* Users can access the FBB via the World Wide Web at *http://fedbbs.access.gpo.gov.*

User assistance for the FBB is available from 7 a.m. until 5 p.m., Eastern Time, Monday through Friday (except federal holidays) by calling the GPO Office of Electronic Information Dissemination Services at 202–512–1530, toll-free at 888–293–6498; sending an e-mail to *gpoaccess@gpo.gov;* or sending a fax to 202–512–1262.

Access to this notice is also available to Internet users through the **Federal Register**'s home page at *http://www.nara.gov/fedreg.*

Background

The FHWA, in cooperation with the City of Des Moines and the Iowa Department of Transportation will prepare an Environmental Impact Statement (EIS) for the Southeast Connector urban arterial street corridor from Southeast 14th Street to its planned connection to Highway 65, all in southeasterly Des Moines.

The proposed project is intended to directly connect the primarily industrial southeast quadrant of Des Moines to both the Highway 65 outer beltway and downtown via the Martin Luther King Jr. Parkway Extension over the Des Moines River. The increased connectivity will lead to economic development opportunities in the southeast area of the city, including a planned agribusiness park and improved access for redeveloped areas. Other potential benefits include improving regional mobility, addressing local road system deficiencies, improving access to jobs, improving safety, and improving traffic operations. Primary environmental resources that may be affected include numerous known and potential hazardous waste generating sites, floodplains, wetlands, and agricultural land. The surrounding area also contains stable and cohesive populations of minority and low-income residents, which will lead to the consideration of environmental justice impacts.

Alternatives under consideration include the no action, transportation system management (TSM)/travel demand management (TDM), new arterial roadway, existing arterial improvement, and transit alternatives. The mode, project type, location, and length of the alternatives evaluated will be identified based on the results of alternative studies.

The scoping process undertaken as part of this proposed project will include distribution of a scoping information packet, coordination with appropriate Federal, State and local agencies, including an agency scoping meeting to be held on September 7, 2005, at 1 p.m. at the St. Etienne Conference Room in the Armory Building at 602 Robert D. Ray Drive, Des Moines, Iowa 50309. A study group comprised of local officials, environmental organizations, and other community interest groups has been established to provide input during the development of the purpose and need and alternative analyses.

To help ensure that a full range of issues related to this proposed project are identified and all substantive issues are addressed, a comprehensive public involvement program has been devised. It includes meetings with advisory committees, resource agencies, local officials, and interest groups; public informational meetings and workshops; newsletters; and focus groups. Public notice will be given of the time and place of all public meetings and the public hearing. The Draft EIS will be available for public review and comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed project and the EIS should be directed to the FHWA, Iowa Department or Transportation, or City of Des Moines at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Dated: June 15, 2005.

Gerald L. Kennedy,

Acting Division Administrator, FHWA, Iowa Division.

[FR Doc. 05–14377 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Burlington Northern Santa Fe (BNSF) Railway Company

[Docket Number FRA–2005–21359]

Burlington Northern Santa Fe (BNSF) Railway Company seeks a waiver of compliance from certain provisions of Title 49 of the CFR, part 213, Track Safety Standards. Specifically, BNSF seeks relief from the requirements of Section 213.121–Rail Joints, which prescribe the requirements for rail joints, including standard joints, insulated joints (IJ), and compromise joints.

BNSF, in conjunction with Omega Industries of Vancouver, WA, is developing a new generation of IJ, and seeks a waiver in order to permit field testing of this new design. This new design differs from typical accepted IJ construction because it does not utilize a continuous angle bar. Instead, the design calls for the running rail on each side being attached to a large interlocking bearing and shaft that is cast into an H-shaped concrete tie that uniformly distributes loads to the ballast. The principal advantage of this design is that it provides for a large bearing surface that uses the entire rail base resting on conventional concrete tie pads to distribute vertical loading. The manufacturer and BNSF offer other advantages of such a design to include: Delrin plastic in place of a traditional fiberglass endpost, vertical movement is further restricted by a vertically positioned bolt system, no need for messy and toxic epoxy/glue substances, rails can easily be replaced without removing the joint, allowing correction of a rail failure without necessarily replacing the entire IJ.

BNSF Railway Company offers the following testing plan:

1. The initial IJ will be installed in a yard location (FRA Class 1 speed) on a non-signaled track segment. Any design, construction, or installation shortcomings (in this case, current leakage from one rail to the next rail) will not result in a signal failure. This phase one test will remain in track for six months prior to moving to the next test phase.

Monitoring—During this test phase, the IJ will be monitored for rail movement (all three directions) and current isolation. If the IJ restrains the rail movement and current does not pass from one rail to the next rail, the next test phase will be initiated. This first test IJ will be left in the yard track and will continue to be monitored after the initial six-month period. The IJ will remain in-track until it fails, or if it performs successfully in service for a minimum of one year, BNSF and Omega may option to move it to a signaled track segment in FRA Class 1 or 2 track.

2. A second IJ will be installed in a Class 1 speed main track at a location that has a signalrequirement. This test IJ will remain in track for a minimum of six months prior to moving to a third test phase.

Monitoring—During this test phase the IJ will be monitored for rail movement (all three directions) and current isolation. If the IJ restrains the rail movement and current does not pass from one rail to the next rail, then the IJ would be graduated to the next test phase. This second IJ will remain in track and continue to be monitored after the initial minimum six-month period.

3. A third IJ will be installed after successful completion of the first phase and second phase tests. The third phase test will be conducted at a signal location in Class 2 speed track. This test IJ will remain in track until the joint fails. If the third phase test joint exceeds what is deemed the average life of conventional insulated joints, currently approximately 250–350 MGT, BNSF and Omega will propose the installation of additional joints. When the test IJ are removed from track due to failure, they will be sent back to the manufacturer for examination to determine the cause of the failure.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2005–21359) and must be submitted to the

Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility.

All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on July 13, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–14342 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Hillsborough Area Regional Transit

[Docket Number FRA–2002–13398]

This notice supercedes the **Federal Register** notice, Vol. 70, No. 118, issued June 21, 2005, at 35771, concerning the above docket number which was issued in error.

In its decision letter dated May 2, 2005, the FRA Railroad Safety Board granted Hillsborough Area Regional Transit (HARTLine) a waiver extension to include the original terms and conditions of its Shared Use/ Limited Connection Waiver, and incorporated changes to the operating plan for a period of one year (for the duration of Phase 1 operating procedures). FRA will consider granting HARTLine a five year extension (with proposed Phase 2 procedures implemented) after reviewing the results of the Phase 1 operation. HARTLine now seeks a modification to this waiver and requests a change in the verbiage of the following paragraph of the May 2, 2005 Decision Letter:

''Phase 1: HARTLine will have its streetcars continue to be required to stop at the signal regardless of indication, with motorman announcing their intention to cross on a proceed (green) signal indication via radio to the HARTLine Rail Dispatcher in lieu of the CSXT flagman. The Rail Dispatcher, via newly installed Remote Monitoring System cameras, would then confirm the signal indication and grant permission to cross if the signal indication allows. The motorman would then recheck the signal; again confirm an appropriate signal indication to the Rail Dispatcher via radio, and cross the interlock. The HARTLine Rail Dispatcher would not control or communicate with CSXT train engineers or make any representations of the signals aspect. The HARTLine Rail Dispatcher will notify CSXT in Jacksonville, Florida, immediately by telephone of any irregularities in the signaling system.''

HARTLine requests that the paragraph be amended to read as follows:

''Phase 1: HARTLine will have its streetcars continue to be required to stop at the signal regardless of indication, with motorman announcing their intention to cross on a proceed (green) signal indication via radio to the HARTLine Rail Dispatcher in lieu of the CSXT flagman. The Rail Dispatcher then confirms the transmission from the motorman that he/she has checked the indication of the signal, and is following its instructions. The motorman would then recheck the signal; again confirm an appropriate signal indication to the Rail Dispatcher via radio, and cross the interlock. The HARTLine Rail Dispatcher would not control or communicate with CSXT train engineers or make any representations of the signals aspect. The HARTLine Rail Dispatcher will notify CSXT in Jacksonville, Florida, immediately by telephone of any irregularities in the signaling system.''

HARTLine is asking the FRA to modify the language of the waiver in order to reinforce the aspect of the failsafe CSXT signal only is used to control regular crossings, and ensure no misinterpretation that the Remote Monitoring System cameras or verbal permission from the Rail Dispatcher are approved crossing devices. Concurrently, HARTLine also is asking FRA to remove a minor typographic error that is present in the Decision Letter.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2002–13398) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on July 13, 2005.

Grady Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–14341 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Hiwassee River Railroad Co.

[Waiver Petition Docket Number FRA–2001–21181]

The Hiwassee River Railroad Co. (HRRC), seeks a waiver of compliance from Certain provisions of the Safety Glazing Standards, title 49, CFR 223.11, Requirements for Existing Locomotives for one locomotive. The HRRC is located in Copperhill, TN. The HRRC states that they operate a non-common carrier between Copperhill, TN and Etowah, TN. Locomotive Number 108 will operate almost exclusively within yard and industrial plant at Copperhill, TN.

The HRRC claims that locomotive 108 is presently equipped with shatterproof glazing, similar to FRA glazing, of the type used before 49 CFR 223.11 was in effect.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2005–21181) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on July 13, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–14343 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Illinois Railway Museum

[Docket Number FRA–2005–21271]

The Illinois Railway Museum (IRM), a standard gage railroad and electric traction museum, seeks a waiver of compliance from the requirements of title 49 Code of Federal Regulations (CFR) 230.17 One thousand four hundred seventy-two (1472) service day inspection for their locomotive number (IRM) 428. Locomotive number 428, is a former Union Pacific steam locomotive, built by the Baldwin Locomotive Works in 1901 (Boiler Number 18303) with a wheel arrangement of 2–8–0.

The IRM is not engaged in general railroad transportation, and provides only railroad/electric railway tourist excursions on a limited schedule. The IRM currently consists of approximately 26 acres of display area, with 1.5 miles of track under cover for display purposes. In addition, they operate a segment of track on the former Elgin & Belvidere electric railway right-of-way, between Kishwaukee Grove and East Union, Illinois, in McHenry County.

This waiver specifically requests relief from the requirements of 49 CFR 230.17(a) General that states: ''In the case of a new locomotive or a locomotive being brought out of retirement, the initial 15 year period shall begin on the day that the locomotive is placed in service or 365 days after the first flue tube is installed in the locomotive, which ever comes first.'' The IRM initiated restoration of the number 428 in January 1984, underwent a successful interior boiler inspection by FRA in October 1999, and passed a hydrostatic test in early 2000. The locomotive has been stored dry, and indoors since the initiation of the restoration project. Relief is sought by IRM to begin the 1,472 service days, and the corresponding 15 year period on the day of the first steam test, not the day the first tube was installed, as they installed the tubes in October 1999, and FRA published the revised 49 CFR part 230 Inspection and Maintenance Standards for Steam Locomotives on November 17, 1999.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2005–21271) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL-401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http:// dms.dot.gov.*

Issued in Washington, DC, on July 13, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–14345 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Maine Narrow Gage Railroad & Museum

[Docket Number FRA–2005–21014]

The Maine Narrow Gage Railroad & Museum (MNGR), a 2-foot gage museum railroad, seeks a waiver of compliance from the requirements of Title 49 Code of Federal Regulations (CFR) 230.51 Water glasses and gage cocks, number and location. The MNGR is not engaged in general railroad transportation, and provides only railroad tourist excursions on a limited schedule. The MNGR currently consists of approximately two miles of track, all located within the waterfront district of Portland, Maine, and adjacent to a park.

This waiver would be for MNGR locomotives numbers 3 and 4, and specifically requests that the minimum reading for the water glasses on these two locomotives be retained at 1½ inches above the highest part of the crown sheet as originally designed, constructed, and operated since 1912. The current requirement, as specified by title 49 CFR 230.51, requires a minimum water reading be visible at 3 inches above the highest part of the crown sheet. If locomotives numbers 3 and 4 are brought into compliance with the regulatory requirement, raising the water glasses would result in the top or full reading being equal height with the top of the boiler. Thus, when the water glass indicates full, there is very little remaining volume for steam to accumulate, and water may carry over into the dry pipe, an unsafe condition. In addition, the boilers on these two locomotives are 37⅛ inches in diameter, which is significantly smaller than that found on standard gage locomotives. The petitioner believes that due to the difference in boiler diameters, an equivalent level of safety exists with their water glass at 1½ inches above the highest part of the crown sheet when compared to a standard gage locomotive set at 3 inches.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2005–21014) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on July 13, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–14344 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New Jersey Transit Corporation (Supplement to Waiver Petition Docket Number FRA–1999–6135)

As a supplement to New Jersey Transit Corporation's (NJ Transit) Petition for Approval of Shared Use and Waiver of Certain FRA Regulations (the original shared use waiver was granted by the FRA Railroad Safety Board on December 3, 1999 and a five year extension was granted by the FRA Railroad Safety Board on May 2, 2005), NJ Transit seeks a permanent waiver of compliance from additional sections of Title 49 of the CFR for continued safe operation of its Southern New Jersey Light Rail Transit (SNJLRT) River Line. NJ Transit submits that this request is consistent with the waiver process for Shared Use. *See* Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).

The River Line is a temporally separated light rail system, sharing track with Conrail, operating through 19 communities, often as close as 100 feet from residences, schools, hospitals, and businesses. NJ Transit estimates that at moderate levels of service, the River Line generates over 5400 audible warnings per day over its 54 highway-rail grade crossings and street intersections on the shared trackage of the Bordentown Secondary from milepost 3.4 to milepost 33.1. NJ Transit proposes that the quality of life of the residents of these communities is significantly impacted by frequent intrusion of horns and bells, resulting in numerous complaints from residents and elected officials. In order to mitigate these concerns, NJ Transit adopted the use of the 86dB(A) setting of the two-level horn on the SNJLRT vehicle as the standard highway-rail grade crossing audible warning device and developed specific light rail operating rules regarding audible warnings at grade crossings on the River Line.

On April 27, 2005, the FRA issued the Final Rule on Use of Locomotive Horns at Highway-Rail Grade Crossings, 69 FR 21844 (2005), with an effective date on June 24, 2005. Although NJ Transit states that its audible warning operating practices on the River Line are generally in compliance with the rules contained in 49 CFR parts 222 and 229 Use of Locomotive Horns at Highway Rail Grade Crossings; Final Rule, it seeks waivers from parts of this rule because of variances in the following areas: The River Line light rail vehicle audible warning decibel level, the use of the River Line vehicle bell in Burlington City, NJ, operating practices for near-side station stops in close proximity to fully activated and deployed grade crossing warning devices, one highway-rail grade crossing in Bordentown, NJ and the horn blowing pattern for specific highway-rail crossings in close proximity to one another.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Because the final rule on Use of Locomotive Horns is now in effect, and because it was not FRA's intention in issuing that rule to require compliance by light rail vehicles operating in joint use situations with the horn decibel level required for conventional rail equipment, FRA may issue temporary relief in this proceeding addressing that issue, following the expiration of ten (10) days from the date of publication of this notice in the **Federal Register** absent persuasive filings indicating that a contrary course of action should be taken.

All communication concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–6135) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on July 13, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–14333 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Santa Clara Valley Transportation Authority (VTA) (Supplemental Waiver Petition Docket Number FRA–1999–6254)

As a supplement to VTA's existing Shared Use/Temporal Separation waiver, originally granted by the FRA on July 7, 2000 (a six month extension was granted on June 29, 2005 to accommodate the time needed for this Supplemental Petition process), VTA seeks a permanent waiver of compliance from sections of Title 49 of the CFR for operation of its new Vasona Corridor Light Rail Project Extension (Vasona Line) which features ''limited connections'' such as a shared corridor operation and an at-grade rail crossing of the light rail track by a UPRR freight spur within this shared corridor. *See Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000). See also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).*

In this regard, VTA has constructed this new extension of its 37-mile light rail system on 5 miles of the existing 15 mile long Union Pacific Railroad (UPRR) Vasona Industrial Lead. This new light rail operation will serve the cities of southwest San Jose, CA and Campbell, CA and is scheduled to open on August 12, 2005. VTA owns this 5 mile long portion of the shared corridor. As such, VTA and UPRR have executed an Operations and Maintenance Agreement, which includes an exclusive operating easement, allowing UPRR to fulfill its obligations as a common carrier of freight by continuing its existing freight operations within the purchased corridor. *This agreement requires VTA to inspect, maintain, and repair all tracks, signal systems and automatic warning devices along the freight track within that portion of the corridor shared with LRT tracks (VTA and UPRR operate on separate tracks within this corridor).* UPRR presently operates two to three round-trip freight trains each week, during daylight hours, over this shared corridor, at speeds not exceeding 25 mph. To avoid impacts to the surrounding communities, freight operations will continue to operate during daylight hours.

In order for UPRR to continue to provide service to a flooring businesses along this shared corridor in San Jose, CA, VTA is seeking a permanent waiver of compliance from Title 49 of the CFR for operation of its new Vasona Light Rail Line over an at-grade rail crossing ''limited connection'' with a UPRR freight spur switched from the Vasona Lead at MP0.41 Race Interlocking. For this crossing, VTA seeks permanent waiver of compliance from sections of title 49 of the CFR, specifically: part 214, subpart B Bridgeworker Safety Standards, subpart C Roadway Worker Protection, part 217 Railroad Operating Rules, part 219 Control of Alcohol and Drug Use, part 220 Railroad Communications, part 221 Rear End Marking Devices, part 223 Safety Glazing Standards, part 225 Accident Reporting, part 228.17(a)(2) Hours of Service (for VTA dispatchers only), part 229 Locomotive Safety Standards, part 231 Railroad Safety Appliances, part 233 Signal Systems Reporting Requirements, part 236 Signal and Train Control Systems, Devices and Appliances-Interlocking, part 238 Passenger Equipment Safety Standards, and part 239 Passenger Emergency Preparedness.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 1999–6254) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. Nevertheless, in view of the fact that VTA intends to commence operations on August 12, 2005, FRA reserves the right to grant temporary relief prior to the expiration of the comment period so that rail service may be instituted as scheduled. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on July 14, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–14340 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Utah Transit Authority

[Supplement and Extension To Waiver Docket Number FRA–1999–6253]

As a supplement to Utah Transit Authority's (UTA) Petition for Approval of Shared Use and Waiver of Certain FRA Regulations (the original shared use waiver was granted by the FRA Railroad Safety Board on August 19, 1999 and a one year extension was granted by the FRA Railroad Safety Board on December 20, 2004), UTA seeks a permanent waiver of compliance from additional sections of title 49 of the CFR and a five year extension of this amended shared use waiver for continued safe operation of its TRAX System. UTA submits that this request is consistent with the waiver process for Shared Use. *See* Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment, 65 FR 42529 (July 10, 2000); see also Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems, 65 FR 42626 (July 10, 2000).

UTA TRAX is a temporally separated light rail system that shares track with Utah Railway, a freight railroad. On December 20, 2004, the FRA agreed to expand the conditions and terms of the original waiver to include 29 Santa Clara Valley Transportation Authority (VTA) cars it recently added to its fleet. Prior to service with UTA TRAX, these VTA cars were already granted a waiver from the 49 CFR part 229 except for § 229.125. UTA did not seek continuance of waiver from this provision because the newly acquired VTA vehicles would be augmented so that the lights would form the triangular pattern, identical to UTA's current fleet which is in compliance with FRA guidelines.

On April 27, 2005, the FRA issued the Final Rule on Use of Locomotive Horns at Highway-Rail Grade Crossings, 69 FR 21844 (2005), with an effective date on June 24, 2005. UTA now seeks a waiver from 49 CFR parts 222 and 229 Use of Locomotive Horns at Highway Rail Grade Crossings; Final Rule. Specifically, UTA now is requesting that the FRA waive the requirements of 49 CFR 229.129(a) with respect to UTA's existing fleet of light rail vehicles insofar as it requires that the horn be sounded at a level of at least 96dB(A) at each public highway-rail crossing.

Including this aforementioned amendment, UTA is requesting that the FRA extend its current shared use waiver for five years. UTA petitions that this time period will provide more certainty to UTA planners when setting schedules and standards for operations and maintenance, and overall make the TRAX system less costly to operate. UTA also proposes that FRA's concerns with the level of state safety oversight by Utah Department of Transportation (UDOT), which led to the one year extension rather than the five years initially sought, are being addressed and that UDOT's State Safety Oversight System Program is in compliance with the Federal Transit Administration's (FTA) State Safety Oversight Final Rule (*see* 49 CFR part 659 Rail Fixed Guideway Systems; State Safety Oversight). UTA also states that it is aware of no accidents or incidents occurring on the shared track portion of the TRAX System that give rise to safety concerns relevant to any of the waived FRA regulations.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Because the final rule on Use of Locomotive Horns is now in effect, and because it was not FRA's intention in issuing that rule to require compliance by light rail vehicles operating in joint use situations with the horn level required for conventional rail equipment, FRA may issue temporary relief in this proceeding following the expiration of ten (10) days from the date of publication of this notice in the **Federal Register** absent persuasive filings indicating that a contrary course of action should be taken.

All communication concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–1999–6253) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on July 13, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–14346 Filed 7–20–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before September 19, 2005.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms:

Title: Personnel Questionnaire—Alcohol and Tobacco Products.

OMB Number: 1513–0002.

TTB Form Number: 5000.9.

Abstract: The information listed on TTB F 5000.9, Personnel Questionnaire, enables TTB to determine whether or not an applicant for an alcohol or tobacco permit meets the minimum qualifications. The form identifies the individual, residence, business background, financial sources for the business, and criminal record. If the applicant is found not to be qualified, the permit may be denied.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Total Annual Burden Hours: 10,000.

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid.

OMB Number: 1513–0008.

TTB Form Number: 5170.7.

Abstract: TTB F 5170.7 is used to document the shipment of taxpaid Puerto Rican articles into the U.S. The form is verified by Puerto Rican and U.S. Treasury officials to certify that products are either taxpaid or deferred under appropriate bond. This serves as a method of protection of the revenue.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 100.

Title: Application for Certification/Exemption of Label/Bottle Approval.

OMB Number: 1513–0020.

TTB Form Number: 5100.31.

Abstract: The Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorized the Secretary of the Treasury to issue regulations to carry out its provisions. To ensure compliance with the FAA Act and the related regulations, industry members complete this form as an application to label their products.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10,982.

Estimated Total Annual Burden Hours: 41,238.

Title: Report—Proprietor of Export Warehouse.

OMB Number: 1513–0024.

TTB Form Number: 5220.4.

Abstract: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor handling receipts, dispositions, and on-hand quantities. TTB F 5220.4 is used for product accountability and is examined by TTB National Revenue Center personnel.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 123.

Estimated Total Annual Burden Hours: 1,181.

Title: Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Tubes.

OMB Number: 1513–0026.

TTB Form Number: 5620.7.

Abstract: TTB F 5620.7 documents that cigars, cigarettes, cigarette papers and tubes were shipped to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States and that the tax has been paid on these tobacco articles. TTB F 5620.7 is the claim form that a person who paid the tax on the articles uses to file for a drawback or refund for the tax that was paid.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 288.

Estimated Total Annual Burden Hours: 144.

Title: Report—Manufacturer of Tobacco Products or Cigarette Papers and Tubes.

OMB Number: 1513–0033.

TTB Form Number: 5210.5.

Abstract: TTB F 5210.5 documents a tobacco products manufacturer's accounting of cigars and cigarettes. The form describes the tobacco products manufactured, articles produced, received, disposed of, and statistical classes of large cigars. TTB examines and verifies entries on these reports so as to identify unusual activities, errors, and omissions.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 150.

Estimated Total Annual Burden Hours: 1,800.

Title: Inventory—Export Warehouse Proprietor.

OMB Number: 1513–0035.

TTB Form Number: 5220.3.

Abstract: TTB F 5220.3 is used by export warehouse proprietors to record inventories that are required by laws and regulations. The form provides a uniform format for recording inventories and establishes a contingent tax liability on tobacco products.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 50.

Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

OMB Number: 1513–0037.

TTB Form Number: 5100.11.

Abstract: TTB Form 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation, transfer to a foreign trade zone, customs manufacturer's bonded warehouse or customs bonded warehouse or for use as supplies on vessels or aircraft.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden Hours: 6,000.

Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

OMB Number: 1513–0040.

TTB Form Number: 5110.25.

Abstract: TTB F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. TTB personnel use the information on the form to identify the applicant, the location of the business, and the types of activities to be conducted.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden Hours: 20.

Title: Drawback on Distilled Spirits Exported.

OMB Number: 1513–0042.

TTB Form Number: 5110.30.

Abstract: The information collected on TTB F 5110.30 provides a uniform format for determining that taxes have already been paid. The form details specific operations and accounts for taxable commodities. Tax liability is established to prevent jeopardy to the revenue derived from distilled spirits. TTB examines and verifies entries so as to identify unusual activities, errors, or omissions.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purpose only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 10,000.

Title: Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

OMB Number: 1513–0043.

TTB Form Number: 5110.31.

Abstract: TTB F 5110.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, amounts of spirits to be shipped, and the bond of the U.S. person to cover taxes on such spirits.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 450.

Title: Applications for Tobacco Products and for Cigarette Papers and Tubes.

OMB Number: 1513–0078.

TTB Form Numbers: 5200.3, 5200.16, 5230.4, and 5230.5.

Abstract: The forms are used by tobacco industry members to obtain and amend permits necessary to engage in business as a manufacturer of tobacco products, importer of tobacco products, or proprietor of an export warehouse.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 630.

Estimated Total Annual Burden Hours: 1,130.

Title: Special Tax Registration and Return Alcohol and Tobacco and Special Tax Registration and Return National Firearms Act (NFA).

OMB Number: 1513–0112.

TTB Forms Number: 5630.5 and 5630.7.

Abstract: 26 U.S.C. Chapters 51, 52, and 53 authorize the collection of an occupational tax from persons engaging in certain alcohol, tobacco, or firearms businesses. TTB F 5630.5 and/or TTB F 5630.7 is used to both compute and report the tax, and as an application for registry as required by statute. Upon receipt of the tax, a special tax stamp is issued.

Current Actions: TTB F 5630.7 is being dropped from our inventory; it is now a Bureau of Alcohol, Tobacco, Firearms and Explosives (Justice Department) form (ATF F 5630.7). There are no changes to TTB F 5630.5, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 90,700.

Estimated Total Annual Burden Hours: 72,778.

Dated: July 14, 2005.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 05–14349 Filed 7–20–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–C, Cancellation of Debt.

DATES: Written comments should be received on or before September 19, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cancellation of Debt.

OMB Number: 1545–1424.

Form Number: 1099–C.

Abstract: Form 1099–C is used by Federal government agencies, financial institutions, and credit unions to report the cancellation or forgiveness of a debt of $600 or more, as required by section 6050P of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the debtor has included the proper amount of canceled debt in income on his or her income tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

Estimated Number of Responses: 647,993.

Estimated Time Per Response: 10 min.

Estimated Total Annual Burden Hours: 110,159.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 14, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3875 Filed 7–20–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Amended notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to lessoning the burden for individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Monday, August 22, 2005.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel was published in the **Federal Register** on July 11, 2005, to be held Monday, August 8, 2005 from 4 p.m. eastern time to 5 p.m. eastern time via a telephone conference call. This meeting has been rescheduled to August 22, 2005, from 1 p.m. to 2 p.m. eastern time, via telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: July 15, 2005.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E5–3874 Filed 7–20–05; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 70, No. 139
Thursday, July 21, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NM–37–AD; Amendment 39–14180; AD 2005–14–03]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 and EMB–135 Series Airplanes

Correction

In rule document 05–13142 beginning on page 38751 in the issue of Wednesday, July 6, 2005, make the following correction:

§ 39.13 [Corrected]

On page 38752, in the second column, in § 39.13, after amendatory instruction 2., in the first and second lines, ''**2005-14 Empresa Brasileira De Aeronautica S.A. (Embraer):''**

should read

''**2005-14-03 Empresa Brasileira De Aeronautica S.A. (Embraer):**''

[FR Doc. C5–13142 Filed 7–20–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,

July 21, 2005

Part II

Department of Housing and Urban Development

Notice of Funding Availability for Fiscal Year (FY) 2004 HOPE VI Main Street Grants; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4962–N–01]

Notice of Funding Availability for Fiscal Year (FY) 2004 HOPE VI Main Street Grants

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

Overview Information

A. *Federal Agency Name.* Department of Housing and Urban Development, Office of Public and Indian Housing.

B. *Funding Opportunity Title.* HOPE VI Main Street Grants.

C. *Announcement Type.* Initial announcement.

D. *Funding Opportunity Number.* The **Federal Register** number for this NOFA is: FR–4962–N–01. The Office of Management and Budget (OMB) paperwork approval number for this program is 2577–0208.

E. *Catalog of Federal Domestic Assistance (CFDA) Number.* The CFDA number for this NOFA is 14–866, ''Demolition and Revitalization of Severely Distressed Affordable Housing (HOPE VI).''

F. *Dates.*

1. *Application Submission Date.* The application submission date is September 2, 2005. See the General Section for application submission and timely receipt requirements.

2. *Estimated Grant Award Date.* The estimated award date will be September 30, 2005.

G. *Electronic Application Submission.* Applications for this NOFA must be submitted electronically through *http://www.grants.gov.* The applicant must register with grants.gov's Central Contractor Registry and must register its Authorized Organization Representative with grants.gov in order to submit an application. Registration may take up to two weeks and must be completed at least 48 hours before the submission date. See ''Other Submission Requirements,'' Section IV.F. of this NOFA and *http://www.grants.gov/GetStarted.*

Full Text of Announcement

I. Funding Opportunity Description

A. *Available Funds.* This NOFA announces the availability of approximately $5 million in Fiscal Year (FY) 2004 funds to produce affordable housing in HUD-defined Main Street rejuvenations.

B. *Purpose of the Program.* The purpose of the HOPE VI Main Street program is to provide grants to small communities to assist in the rehabilitation and new construction of affordable housing in conjunction with an existing program to revitalize an historic or traditional central business district or ''Main Street Area.'' The objectives of the program are to:

1. Redevelop Main Street Areas;
2. Preserve historic or traditional architecture or design features in Main Street Areas;
3. Enhance economic development efforts in Main Street Areas; and
4. Provide affordable housing in Main Street Areas.

C. *Statutory Authority.*

1. The program authority for the HOPE VI Main Street program is Section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v), as amended by Section 535 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998), as amended, and the HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003 (Pub. L. 108–186, 117 Stat. 2685, approved December 16, 2003).

2. The funding authority for the HOPE VI Main Street program is provided by the Consolidated Appropriations Act, 2004 (Pub. L 108–199, approved January 23, 2004), under Division G, Title II, Public and Indian Housing.

3. The HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003 states that, of the amount appropriated for the overall HOPE VI program for any fiscal year, the Secretary shall provide up to five percent for use only for the Main Street initiative. For FY 2004, the Secretary has set aside approximately $5 million for Main Street activities authorized in Section 24(n) of the Act, which provides for grant amounts that shall be used by smaller communities only to provide assistance to carry out eligible affordable housing activities.

D. *Definition of Terms.*

1. *Affordable Housing* means rental or homeownership dwelling units that:

a. Are made available for initial occupancy to low-income families, with a subset of units made available to very low- and extremely low-income families; and

b. Are subject to the same rules regarding occupant contribution toward rent or purchase, and terms of rental or purchase, as are public housing units.

2. *Applicant Team (''Team'')* means the group of entities that will develop the Project. The Team includes the unit of local government that submits the application and, where applicable, the procured developer, the procured property manager, architects, construction contractors, attorneys, partners that comprise the owner entity, and other parties that may be involved in the development and management of the Project.

3. *Community and Supportive Services (''CSS'')* means services to residents of the Project that may include, but are not limited to:

a. Educational activities that promote learning and serve as the foundation for young people from infancy through high school graduation, helping them to succeed in academia and the professional world. Such activities, which include after school programs, mentoring, and tutoring, must be created with strong partnerships with public and private educational institutions;

b. Adult educational activities, including remedial education, literacy training, tutoring for completion of secondary or post-secondary education, assistance in the attainment of certificates of high school equivalency, and courses in English as a Second Language, as needed;

c. Job readiness and job retention activities, which frequently are key to securing private sector commitments to the provision of jobs;

d. Employment training activities that include results-based job training, preparation, counseling, development, placement, and follow-up assistance after job placement;

e. Programs that provide entry-level, registered apprenticeships in construction, construction-related, maintenance, or other related activities. A registered apprenticeship program is a program which has been registered with either a State Apprenticeship Agency recognized by the Department of Labor's (DOL) Office of Apprenticeship Training, Employer and Labor Services (OATELS) or, if there is no recognized state agency, by OATELS. See also DOL regulations at 29 CFR part 29;

f. Life skills training on topics such as parenting, consumer education, and family budgeting;

g. Creation and operation of credit unions to serve residents, including capitalization and technical assistance to foster new credit unions on-site and to encourage existing community credit unions to expand their coverage to include on-site coverage;

h. Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency Program can also be used to promote homeownership, providing assistance with escrow accounts and counseling;

i. Coordinating with health care services providers or providing on-site space for a health clinic, doctors, a wellness center, dentists, etc., that will primarily serve the affordable housing residents. HOPE VI funds may not be used to provide direct medical care to residents;

j. Substance/alcohol abuse treatment and counseling;

k. Activities that address domestic violence treatment and prevention;

l. Child care services that provide sufficient hours of operation to facilitate parental access to education and job opportunities, serve appropriate age groups, and stimulate children to learn;

m. Transportation, as necessary, to enable all family members to participate in available CSS activities and/or to commute to their places of employment;

n. Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses; and

o. Coordinating with fair housing groups to educate the Main Street Affordable Housing Project's targeted population on its fair housing rights.

4. *Firmly Committed* means that the amount of Match resources and their dedication to HOPE VI Main Street activities must be explicit, in writing, and signed by a person authorized to make the commitment.

5. *General Section* means the Notice of HUD's Fiscal Year 2005 Notice of Funding Availability Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Programs; Notice, Docket No. FR–4950-N–01, published in the **Federal Register** on March 21, 2005.

6. *Homeownership Unit* means a housing unit that the Local Government makes available for purchase by low-income families for use as their principal residence;

7. *Initial Occupancy Period* means the period of time that a rental unit is occupied by the initial low-income resident or the period of time that a homeownership unit is owned by the initial third-party, low-income purchaser.

8. *Jurisdiction* means the physical area under the supervision of the Local Government.

9. *Local Government* means any city, county/parish, town, township, parish, village, or other general purpose political subdivision of a state; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the District of Columbia and the Trust Territory of the Pacific Islands, or a general purpose political subdivision thereof; a combination of such political subdivisions that is recognized by the Secretary.

10. *Low-Income* means a family (resident) with an income equal to or less than 80 percent of median income for the local area, adjusted for family size, in accordance with Section 3(b)(2) of the United States Housing Act of 1937, as amended. HUD may establish a level higher or lower than 80 percent because of prevailing construction costs or unusually high or low family incomes in the area. HUD prescribed income limits are stated at *http://www.huduser.org/datasets/il/IL05/Section8_IncomeLimits_2005.doc.* Local area is defined as the Primary Metropolitan Statistical Area/Metropolitan Statistical Area (PMSA/MSA) or county/parish, as prescribed by HUD, in which the low-income family resides.

11. *Main Street Area* means an area specifically designated by the applicant, within the jurisdiction of the applicant that is or was;

a. Traditionally the central business district and center for socio-economic interaction;

b. Characterized by a cohesive core of historic and/or older commercial and mixed-use buildings, often interspersed with civic, religious, and residential buildings, which represent the community's architectural heritage;

c. Typically arranged along a main street with intersecting side streets and public space; and

d. Pedestrian-oriented.

12. *Main Street Affordable Housing Project (''Project'')* is defined in Section III.C.2.b. of this NOFA, ''Program Requirements.''

13. *Main Street Rejuvenation Master Plan (''Master Plan'')* is a document, or group of documents, that:

a. Serves to guide the rejuvenation of a Main Street Area;

b. Is actively administered and implemented by the applicant, an agency of the local government, or a developer entity recognized by the applicant;

c. Addresses major components such as design, organization, promotion, and economic impact;

d. Has broad community support;

e. Involves investment by the public and private sectors;

f. Has a strong preservation element for historic or traditional architecture;

g. Shows long-term planning and commitment; and

h. Complies with the minimum requirements stated in the Program Requirements in Section III.C.2. of this NOFA.

14. *Match* is cash or in-kind donations that:

a. Total at least five percent of the requested HOPE VI Main Street grant amount; and

b. Are from government or private-sector sources other than HOPE VI funding.

15. *Owner entity* is the legal entity that holds title to the real property that contains any affordable housing units developed through this NOFA.

16. *Person with disabilities* means a person who:

a. Has a condition defined as a disability in Section 223 of the Social Security Act;

b. Has a developmental disability as defined in Section 102 of the Developmental Disabilities Assistance Bill of Rights Act; or

c. Is determined to have a physical, mental, or emotional impairment which:

(1) Is expected to be of long-continued and indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions.

d. The term ''person with disabilities'' may include persons who have acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS. In addition, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing, solely on the basis of any drug or alcohol dependence.

e. The definition provided above for persons with disabilities is the proper definition for determining program qualifications. However, the definition of a person with disabilities contained in Section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of reasonable accommodations.

17. *Program* means the HOPE VI Main Street Program.

18. *Recognized Developer* is:

a. A procured developer that is a legal entity and that has a contract or ''Developer Agreement'' with a Local Government to finance, rehabilitate and/or construct housing units, and to provide Community and Supportive Services (if required), for a HOPE VI Main Street grantee; or

b. The Local Government applicant itself.

19. *Unit of Local Government:* See ''Local Government'' under this section.

20. *Very Low-Income Family* means a family (resident) with an income equal to or less than 50 percent of median income for the local area, adjusted for family size, in accordance with Section

3(b)(2) of the United States Housing Act of 1937, as amended. HUD may establish a level higher or lower than 50 percent because of prevailing construction costs or unusually high or low family incomes in the area. HUD prescribed income limits are stated at *http://www.huduser.org/datasets/il/IL05/Section8_IncomeLimits_2005.doc.* Local area is defined as the PMSA/MSA or nonmetropolitan county/parish, as prescribed by HUD, in which the low-income family resides.

E. *Eligible Uses of Grant Funds.*

1. Main Street grant funds may be expended on the following activities:

a. New construction and rehabilitation of Main Street-related affordable rental and homeownership housing;

b. Architectural and Engineering activities, surveys, permits, and other planning and implementation costs related to the construction and rehabilitation of Main Street-related affordable housing;

c. Tax credit syndication;

d. Funding of moving expenses for low-income residents displaced as a result of construction or rehabilitation of the Project, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA);

e. Economic development activities that promote the economic self-sufficiency of low-income residents of the Project;

f. Management improvements necessary for the proper development and management of Main Street-related affordable housing, including, but not limited to:

(1) Staff training (including travel) related to affordable housing development and management and public housing property management;

(2) Staff time and materials or contractor services to revise or develop:

(a) Procedure manuals;

(b) Accounting systems, excluding accounting services;

(c) Lease documents;

(d) Resident screening procedures; and

(e) Data processing systems.

g. *Leveraging non-HOPE VI funds and in-kind services;*

h. *Community and Supportive Services.* See Funding Restrictions in Section IV.E. of this NOFA.

F. *General Section Reference.* The subsection entitled ''Funding Opportunity Description'' in Section I. of the General Section is hereby incorporated by reference.

II. Award Information

A. *Available Funds.* A total of $5 million is available for funding, which must be obligated on or before September 30, 2005.

B. *Number of Awards.* This NOFA will result in approximately 10 to 15 awards.

C. *Range of Amounts of Each Award.* Each applicant may request up to $500,000.

D. *Start Date, Period of Performance.* The term of the grants that result from this NOFA will start on the date that the grant award document is signed by HUD and will continue for 30 months.

E. *Type of Instrument.* Grant Agreement.

F. *Supplementation.* Grants resulting from this NOFA do not supplement other HOPE VI grants.

III. Eligibility Information

A. *Eligible Applicants.* Eligible applicants include, and are limited to, Local Governments, as defined in Section I.D. of this NOFA and Section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302). The Local Government must:

1. Have a Main Street rejuvenation effort within its jurisdiction;

2. Have a population of 50,000 or less; and

3. Not be served by a public housing agency that administers more than 100 public housing units. For this NOFA, HUD does not consider agencies of the State government to be public housing agencies.

B. *Cost Sharing or Match.*

1. *Match.* HUD is required by the Quality Housing and Work Responsibility Act (42 U.S.C. 1437v(c)(1)(A)) to include the requirement for matching funds for all HOPE VI-related grants. Applicants must provide matching funds in the amount of five percent of the requested grant amount from sources other than HUD HOPE VI funds. Match sources may include other federal sources, any state or local government sources, any private contributions, the value of any donated material or building, the value of any lease on a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services provided. The match may include funds already spent on, or funds committed to, the project, provided that they were or shall be used only for carrying out eligible affordable housing activities.

a. Match donations must be firmly committed. ''Firmly committed'' means that the amount of match resources and their dedication to Main Street-related affordable housing activities must be explicit, in writing, and signed by a person authorized to make the commitment. The commitment must be in place at the time of award. See Section IV.F. of this NOFA for detailed instructions on the procedures related to the submission of third-party documents.

b. The applicant may propose to use the applicant's own funds to meet the match requirement.

c. The applicant's staff time is not an eligible cash or in-kind match.

d. See Section IV.B. of this NOFA for the requirements for documentation of match resources.

C. *Other.*

1. *Thresholds.*

a. *Main Street Area.* The applicant must have within its jurisdiction a Main Street Area. See Section I.D. of this NOFA for the definition of a Main Street Area. If the applicant's jurisdiction does not have a Main Street Area, the application will not be eligible for funding through this NOFA.

b. *Master Plan.* A Main Street Rejuvenation Master Plan for the Main Street Area must have been in existence for three years prior to the application submission date, and, if one exists, be included in the applicant's Consolidated Plan. See Section I.D. of this NOFA for the definition of a Main Street Rejuvenation Master Plan. If the applicant's Main Street Rejuvenation Master Plan has not been in existence for three years prior to the application submission date, the application will not be eligible for funding through this NOFA.

c. *Main Street Affordable Housing Project (''Project'').* The targeted affordable housing project must conform to this NOFA's requirements for a Main Street Affordable Housing Project, as defined in Section III.C.2.b. of this NOFA. If the targeted affordable housing project does not conform to this NOFA's requirements of a project, the application will not be eligible for funding through this NOFA.

d. *Inclusion of Affordable Housing.* The project must have been included in the applicant's master plan on or before the date of publication of this NOFA. If the project was not included in the applicant's master plan on or before the date of publication of this NOFA, the application will not be eligible for funding through this NOFA.

e. *Zoning.* Zoning for residential housing, or mixed-use zoning that includes residential housing, must be in place on all project sites on or before the application submission date. If zoning for residential housing, or mixed-use zoning that includes residential housing, is not in place on all project sites on or before the application submission date, the application will not be eligible for funding through this NOFA.

f. *Site Control.* The applicant, or recognized developer entity of the project, must have site control of all properties where affordable housing will be developed on or before the application submission date. If the applicant, or recognized developer entity of the Main Street project, does not have site control of all properties where affordable housing will be developed on or before the application submission date, the application will not be eligible for funding through this NOFA.

g. *Program Schedule.* The applicant must include a program schedule, developed in accordance with Section VI.B.4.c. of this NOFA, ''Reasonable Timeframe,'' as part of the application. If such a program schedule is not included in the application, the application will not be eligible for funding through this NOFA.

h. *Main Street Area Leverage.* The applicant must provide leverage funds and/or in-kind services in excess of 100 percent of the requested grant amount from sources other than HUD HOPE VI funds. Note that this threshold is for leverage that is related to the entire Main Street Area effort. Leverage that is specifically related to the Main Street Affordable Housing Project is measured in Section V.A.4. of this NOFA.

(1) Types of resources that may be counted include:

(a) Private mortgage-secured loans and other debt;

(i) The application must include each loan's expected term of maturity;

(ii) Where there is both a construction loan and a permanent take-out loan, only the value of the permanent loan amount will be counted; and

(iii) If the applicant has obtained a construction loan but not a permanent loan, the value of the construction loan will be counted;

(b) Insured loans;

(c) Housing trust funds;

(d) Net sales proceeds from a homeownership project that exceed the amount of HOPE VI funds used to develop the homeownership unit;

(e) Tax Increment Funding (TIF);

(f) Tax Exempt Bonds;

(g) Low-Income Housing Tax Credits (LIHTC);

(h) Historic Preservation Tax Credits;

(i) Other Public Housing Funds. Capital Fund Program funds may be included provided that public housing exists in the Main Street Area. HOPE VI funds may not be counted as leverage;

(j) Other Federal Funds. Other federal sources may include non-public housing funds provided by HUD;

(k) Land Sale Proceeds. The value of land may be included as a development resource only if this value is a sales proceed. Absent a sales transaction, the value of land may not be counted;

(l) Donations of Land. Donations of land may be counted as leverage only if the donating entity owns the land to be donated;

(m) In-kind services, such as those pertaining to:

(i) Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency Program can also be used to promote homeownership, such as by providing assistance with escrow accounts and counseling, including fair housing counseling;

(ii) Coordinating with health care services providers or providing on-site space for a health clinic, doctors, a wellness center, dentists, etc., that will primarily serve the affordable housing residents. HOPE VI funds may not be used to provide direct medical care to residents;

(iii) Substance/alcohol abuse treatment and counseling;

(iv) Transportation, as necessary, to enable all family members to participate in available CSS activities and/or to commute to their places of employment;

(v) Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses;

(vi) Materials;

(vii) A building;

(viii) A lease on a building;

(ix) Other infrastructure;

(x) Time and services contributed by volunteers;

(xi) Supplies; and

(xii) Other CSS and FSS resources.

(2) Note that wages projected to be paid to residents through jobs, or projected benefits (*e.g.*, health, insurance, and retirement benefits) related to those projected jobs that are provided by CSS Partners, will not be counted as leverage.

(3) Leverage funds may include cash or in-kind services. However, in-kind services of staff time of either the Local Government applicant or the recognized developer entity will not be counted by HUD as leverage.

(4) Leverage funds may include funds already spent, or funds and/or in-kind services firmly committed to the Main Street Area as a whole, not just the targeted affordable housing project related to this NOFA.

(5) Leverage funds/in-kind services may include match funds.

(6) If the applicant provides leverage funds/in-kind services of an amount less than 100 percent of the requested grant amount, the application will not be eligible for funding through this NOFA.

i. *One Main Street Area.* The applicant may only include one Main Street Area in the application. However, the applicant's project may consist of several scattered sites within that one Main Street Area. If the applicant includes more than one Main Street Area in the application, the application will not be eligible for funding through this NOFA.

j. *One application.* The applicant may submit only one HOPE VI Main Street application as described in this NOFA. If more than one application is submitted by a single applicant, all applications will be disqualified and no application will be eligible for funding.

k. *Appropriateness of the Application.* The application demonstrates the appropriateness of the proposal in the context of the local housing market relative to other alternatives.

l. The following sub-sections of Section III of the General Section are hereby incorporated by reference. The applicant must comply with each of the incorporated threshold requirements in order to be eligible for funding, including:

(1) Ineligible Applicants;

(2) Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement;

(3) Compliance with Fair Housing and Civil Rights Laws;

(4) Conducting Business In Accordance with Core Values and Ethical Standards;

(5) Delinquent Federal Debts;

(6) Pre-Award Accounting System Surveys;

(7) Name Check Review;

(8) False Statements;

(9) Prohibition Against Lobbying Activities; and

(10) Debarment and Suspension.

2. *Program Requirements.*

a. *Main Street Project Requirements.* The applicant must have, within the applicant's jurisdiction, a HUD-recognized Main Street project that includes affordable housing. In order to be recognized by HUD as a Main Street project, the rejuvenation effort must:

(1) Be located within a definable Main Street Area (See Section I.D. of this NOFA);

(2) Have as its purpose the rejuvenation or redevelopment of a historic or traditional commercial area;

(3) Involve investment or other participation by the local government and locally located private entities;

(4) Comply with historic preservation requirements as directed by the

cognizant State Historic Preservation Officer (''SHPO'') or, if such historic preservation requirements are not applicable, to preserve significant traditional, architectural, and design features in the project structures or Main Street area; and

(5) Have been described in a Main Street Rejuvenation Master Plan that was acknowledged by the applicant at least three years prior to the application submission date.

b. *Main Street Affordable Housing Project.* HUD refers to the rejuvenation or development of affordable housing in the Main Street Area as a ''Main Street Affordable Housing Project'' (''project''). The project must:

(1) Include the construction or substantial rehabilitation of affordable housing units. The number of units that will be developed through this NOFA must equal the number of units stated in form HUD–52861, ''HOPE VI Main Street Application Data Sheet,'' on the ''Unit Mix and Accessibility Summary, Post-Revitalization'' page.

(2) Involve the rehabilitation or development of affordable housing;

(3) Be located within the boundaries of the applicant's Main Street Area;

(4) Be located within the jurisdiction of the applicant; and

(5) Have been included as part of a Main Street Rejuvenation Master Plan before the publication date of this NOFA.

c. *Master Plan.* The Main Street Rejuvenation Master Plan must, at a minimum:

(1) Have been prepared, in whole or in part, by an architect, land planner, or qualified planning professional for the applicant or the developer entity recognized by the applicant;

(2) Describe the proposed Main Street project redevelopment strategies;

(3) Include a map indicating the Main Street Area;

(4) Include a narrative that refers to the map and describes the various planned redevelopment actions;

(5) Include the development of affordable housing; and

(6) Include a list of properties where affordable housing will be rehabilitated or developed. The list of properties must have been included in the master plan on or before the application submission date.

d. *Applicable Initial Resident Rental Contribution and Protections.* The initial resident of a project unit is subject to the same rules regarding occupant contribution toward rent or purchase, and terms of rental or purchase, as residents in HOPE VI Revitalization development public housing units.

e. *Requirements During the Initial Occupancy Period for Rentals.*

(1) Initial residents of affordable rental units and initial resident purchasers of affordable homeownership units must be subject to the same rules regarding occupant contribution toward rent or purchase, and terms of rental or purchase, as residents of public housing units in a HOPE VI development.

(2) The project owner entity is not required to develop most mandatory PHA documentation, *e.g.*, the PHA Plans as described in 24 CFR part 903, etc. However, before the project is initially rented, the ownership entity must develop a written statement of its rent determination and resident grievance policies.

(3) Public housing rental and grievance requirements that are contained in 24 CFR 903.7(d) and 24 CFR 903.7(f) may be used as examples for (1) and (2) above.

f. *Requirements for Initial Homeownership Sale.* The initial sale of an affordable homeownership unit must take place in accordance with Section 24 of the U.S. Housing Act of 1937 (1937 Act), as amended.

g. *Use Restrictions.* Project units must be maintained as affordable housing for only the period of initial occupancy or the initial resident's ownership. Use restrictions beyond the initial occupancy period may or may not be applied to the unit at the discretion of the applicant.

h. *Leveraging Other Resources.* This NOFA states that each applicant must obtain non-HOPE VI leverage resources for use in the Main Street Affordable Housing Project (see Sections III.B. and V.A.4.a. of this NOFA) and, separately, for use in the general Main Street Area effort (see also Section III.C.1.h. of this NOFA).

Main Street grant funds may be used to maximize the amount of leverage, i.e., leveraged funds and in-kind services, that the applicant can obtain from sources other than the HOPE VI program. In this capacity, grant funds may be used: (1) To collateralize municipal bonds or private-sector loans for affordable housing uses; and (2) As affordable housing ''key money'' to attract Main Street Affordable Housing Project or Main Street Area leverage.

(1) Uses of Leverage. Leverage funds and in-kind services may be used for eligible activities listed in Section I.E. of this NOFA and for related activities, including, but not limited to:

(a) For Main Street Affordable Housing Project Leverage:

(i) The acquisition of Main Street Affordable Housing Project-related affordable housing, including associated costs, such as appraisals, surveys, tax settlements, broker fees, and other closing costs;

(ii) Site improvements related to the construction and rehabilitation of Main Street Affordable Housing Project-related affordable housing;

(iii) Clearing of interior space that is necessary to facilitate rehabilitation of affordable housing units within a building;

(iv) Funding of Reserves, *e.g.*, Initial Operating Reserve necessary for financial viability during the initial affordable housing occupancy period, Replacement Reserves, etc.;

(v) Homeownership financial assistance, *e.g.*, write-down of homeownership unit development costs and down payment assistance;

(vi) Other uses that relate directly to the Main Street Affordable Housing Project;

(b) For Main Street Area Leverage:

(i) Rehabilitation of retail space;

(ii) Site improvements, *e.g.*, repaving streets or upgrading streets or sidewalks with brick or cobblestone, adding ''boulevard'' islands, etc.;

(iii) Legal and administrative fees and costs; and

(iv) Other uses that do not relate directly to the Main Street Affordable Housing Project, but do relate to the general Main Street Area effort.

i. *Transfer of Title for Tax Credits.* The original owner entity of Main Street Affordable Housing Project properties may transfer title to, or commit to a long-term lease with, an owner entity partnership that includes the original owner, the applicant, an equity partner and, when appropriate, other partners, for the purpose of obtaining Low Income or Historic Tax Credit equity as a leverage resource. See Section IV.E. of this NOFA for limits on sale of real property.

j. *Section 106 Historic Preservation Requirements.* Grantees may not commit HUD funds until HUD has completed the historic preservation review and consultation process under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f) and its implementing regulation, 36 CFR part 800, as applicable, in accordance with environmental review requirements under 24 CFR part 50. See *http://www.achp.gov/* for details on the Section 106 review process.

k. *Environmental Requirements.*

(1) HUD's notification of award to a selected applicant constitutes a preliminary approval by HUD, subject to HUD's completion of an environmental review, of proposed sites in accordance with 24 CFR part 50. Selection for

participation (preliminary approval) does not constitute approval of the proposed site(s).

(2) Your application constitutes a certification that you, the applicant, will supply HUD with all available, relevant information necessary for HUD to perform any environmental review required by 24 CFR part 50 for each property; will carry out mitigating measures required by HUD or, if mitigation is not feasible, select alternate eligible property; and will not acquire, rehabilitate, convert, demolish, lease, repair, or construct property, nor commit or expend HOPE VI, other HUD or other non-HUD funds for these program activities with respect to any eligible property, until you receive written HUD approval of the property.

(3) Each proposal will be subject to a HUD environmental review, in accordance with 24 CFR part 50, and the proposal may be modified or the proposed sites rejected as a result of that review.

(4) Phase I and Phase II Environmental Site Assessments. If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the ASTM Standards E 1527–00, as amended, for each affected site. The results of the Phase I assessment must be included in the documents that must be provided to HUD for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

(5) Mitigating and remedial measures. You must carry out any mitigating/remedial measures required by HUD. If a remediation plan, where required, is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

(6) Your application constitutes a certification that there are not any environmental or public policy factors such as sewer moratoriums that would preclude development in the requested Main Street Area.

(7) Note that environmental requirements for this NOFA are found in 24 CFR part 50, which requires HUD environmental approval. Please note that 24 CFR part 58, which allows State and local governments to assume Federal environmental responsibilities, is not applicable.

(8) HUD's Environmental Web site is located at *http://www.hud.gov/offices/cpd/energyenviron/environment/index.cfm*.

l. *Building Standards.*

(1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. The applicant is encouraged to read the policy statement and Final Report of the HUD Review of Model Building Codes that identifies the variances between the design and construction requirements of the Fair Housing Act and several model building codes. That report can be found on the HUD Web site at *http://www.hud.gov/fhe/modelcodes*.

(2) Deconstruction. HUD encourages the applicant to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or ''deconstruction'' of housing units, recycling of demolition debris, and reusing salvage materials in new construction. ''A Guide to Deconstruction'' can be found at *http://www.hud.gov/deconstr.pdf*.

(3) Partnership for Advancing Technology in Housing (''PATH''). HUD encourages the applicant to use PATH technologies in the construction and delivery of affordable housing. PATH is a voluntary initiative that seeks to accelerate the creation and widespread use of advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our nation's housing.

(a) The goal of PATH is to achieve dramatic improvement in the quality of American housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance, and financial industries, and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

(i) Reducing costs;
(ii) Improving durability;
(iii) Increasing energy efficiency;
(iv) Improving disaster resistance; and
(v) Reducing environmental impact.

(c) More information, including a list of technologies, the latest PATH Newsletter, results from field demonstrations, and descriptions of PATH projects can be found at *www.pathnet.org.*

(4) Energy Efficiency.

(a) New construction must comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

(b) In HOPE VI new construction, HUD encourages the applicant to set higher energy and water efficiency standards than the Model Energy Code contains. Such higher standards can achieve utility savings of 30 to 50 percent with minimal extra cost.

(c) The applicant is encouraged to negotiate with its local utility company to obtain lower utility rates. Utility rates and tax laws vary widely throughout the country. In some areas, local governments are exempt or partially exempt from utility rate taxes. Some local governments have paid unnecessarily high utility rates because they were billed using an incorrect rate classification.

(d) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(e) The applicant must use new technologies that will conserve energy and decrease operating costs where cost effective. Examples of such technologies include:

(i) Geothermal heating and cooling;
(ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;
(iii) Photovoltaics (technologies that convert light into electrical power);
(iv) Extra insulation;
(v) Smart windows; and
(vi) Energy Star appliances.

(5) Universal Design. HUD encourages the applicant to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, and when communicating with community residents at public meetings or events. Universal Design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of Universal Design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal Design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them. The Department has a publication that contains a number of ideas about how the principles of Universal Design can

benefit persons with disabilities. To order a copy of *Strategies for Providing Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership*, go to the publications and resource page of the HOPE VI Web site at *http://www.huduser.org/publications/pubasst/strategies.html*.

(6) Energy Star. The Department of Housing and Urban Development has adopted a wide-ranging energy action plan for improving energy efficiency in all program areas. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency (EPA) and the Department of Energy (DoE) have signed a partnership to promote energy efficiency in HUD's affordable housing efforts and programs. The purpose of the Energy Star partnership is to promote energy efficiency of the affordable housing stock, but also to help protect the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to promote energy efficiency in design and operations. They are urged especially to purchase and use Energy Star-labeled products. Applicants providing housing assistance or counseling services are encouraged to promote Energy Star building to homebuyers and renters. Program activities can include developing Energy Star promotional and information materials, outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances, and promoting the designation of community buildings and homes as Energy Star compliant. For further information about Energy Star, see *http://www.energystar.gov* or call 1–888-STAR-YES (1–888–782–7937) or for the hearing-impaired, 1–888–588–9920 TTY.

(7) All buildings must be in compliance with design and construction requirements of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Section 109 of the Housing and Community Development Act of 1974.

m. *Lead-Based Paint.* The applicant must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). The applicant must also comply with regulations at 24 CFR part 35, as they may be amended or revised from time to time. Unless otherwise provided, the applicant will be responsible for lead-based paint evaluation and reduction activities for housing constructed prior to 1978. The National Lead Information Hotline is 1–800–424–5323.

n. *Labor Standards.*

(1) If other federal programs are used in connection with the applicant's HOPE VI Main Street activities, Davis-Bacon requirements apply to the extent required by the other federal programs.

(2) If an applicant provides Main Street grant funds to a PHA to construct, rehabilitate, or otherwise assist affordable housing under this NOFA, Davis-Bacon wage rates will apply to laborers and mechanics (other than volunteers under 24 CFR part 70) employed in the development of such units, and HUD-determined wage rates will apply to laborers and mechanics (other than volunteers) employed in the operation of such units.

o. *Relocation Requirements.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1979 (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24 apply to anyone who is displaced as a result of acquisition, rehabilitation, or demolition due to a HUD-assisted activity.

p. *Fair Housing and Equal Opportunity Requirements.*

Fair Housing and Equal Opportunity requirements stated in Section III.c.2.(c) of the General Section apply as referenced in this NOFA. In addition, the following requirement applies:

(1) Accessibility Requirements.

(a) All ''multifamily'' HOPE VI developments, defined as projects with more than five units, are subject to the accessibility requirements contained in several federal laws, as implemented in 24 CFR part 8. PIH Notice 2003–31, available at *http://www.hud.gov/offices/pih/publications/notices/*, and subsequent updates, provides an overview of all pertinent laws and implementing regulations pertaining to HOPE VI.

(b) Generally, for substantial rehabilitation of projects with more than 15 housing units, or new construction of a multifamily project, at least 5 percent of the units, or one unit, whichever is greater, must be accessible to persons with mobility impairments. An additional 2 percent, but not less than one unit, must be made accessible for persons with hearing or vision impairment. See, in particular, 24 CFR parts 8.20 through 8.32.

(c) In addition, under the Fair Housing Act, all new construction of covered multifamily buildings must contain certain features of accessible and adaptable design. The relevant accessibility requirements are provided in HUD's FHEO Web site at *http://www.hud.gov/groups/fairhousing.cfm*. Units covered are all those in elevator buildings with four or more units and all ground floor units in buildings without elevators. See also ''program accessibility'' at *http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor263905*. This section is in addition to, and does not replace, other non-HUD accessibility requirements that the applicant local government may be subject to.

(2) Compliance with Fair Housing and Civil Rights Laws.

(a) Applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a).

(b) If you, the applicant:

(i) Have been charged with an ongoing systemic violation of the Fair Housing Act; or

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(iii) Have received a letter of noncompliance findings, identifying ongoing systemic noncompliance, under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Section 109 of the Housing and Community Development Act of 1974; and

(iv) The charge, lawsuit or letter of findings referenced in subpart (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application deadline, then you are ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken prior to the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to:

(A) A voluntary compliance agreement signed by all parties in response to a letter of findings;

(B) A HUD-approved conciliation agreement signed by all parties;

(C) A consent order or consent decree; or

(D) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

3. *General Section References.* The following subsections of Section III of the General Section are hereby incorporated by reference:

a. Additional Nondiscrimination and Other Requirements;

(1) Civil Rights Laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*);

(2) The Age Discrimination Act of 1974 (42 U.S.C. 6101 *et seq.*); and

(3) Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*)

b. Affirmatively Furthering Fair Housing;

c. Economic Opportunities for Low- and Very Low-Income Persons (Section 3);

d. Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses;

e. Relocation;

f. Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency (LEP);

g. Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations;

h. Accessible Technology;

i. Procurement of Recovered Materials;

j. Participation in HUD-Sponsored Program Evaluation;

k. Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects;

l. Salary Limitation for Consultants;

m. OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs;

n. Drug-Free Workplace; and

o. Safeguarding Resident/Client Files.

IV. Application and Submission Information

A. Addresses To Request Application Package

This section describes how you may obtain application forms, additional information about the General Section of this NOFA, and technical assistance.

1. Copies of this published NOFA and related application forms may be downloaded from the grants.gov Web site at *http://www.grants.gov/FIND.* If you have difficulty accessing the information, you may receive customer support from grants.gov by calling the help line at (800) 518–GRANTS or by sending an email to *support@grants.gov.* The operators will assist you in accessing the information. If you do not have Internet access and need to obtain a copy of this NOFA, you can contact HUD's NOFA Information Center toll-free at (800) HUD–8929. Persons with hearing or speech impairments may call toll-free at (800) HUD–22091.

2. *Application Kits.* There are no application kits for HUD programs. All the information you need to apply will be in the NOFA and available on *http://www.grants.gov.*

3. The published **Federal Register** document is the official document that HUD uses to evaluate applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy, electronic copy, or at *http://www.grants.gov*, the **Federal Register** publication prevails. Please be sure to review the application submission against the requirements in the **Federal Register** file of this NOFA.

B. Content and Form of Application Submission

1. *Number of Applications Permitted.* Each applicant may submit only one application.

2. *Joint Applications.* Joint applications are not permitted. However, the applicant may enter into subgrant agreements with procured developers, other partners, nonprofit organizations, state governments, or other local governments to perform the activities proposed under the application.

3. *General Format and Length of Application.*

a. *Applicant Name.* The applicant's name must include the name of the Local Government that is applying and the state in which the Local Government is located.

b. *Electronic Format.*

(1) Narrative. Narrative sections of the application are as listed in Section IV.B.3.c. of this NOFA. Each section should be contained in a separate file. Each file should contain one title page.

(a) Narrative Title Pages. HUD will use title pages as tabs when it downloads and prints the application. Provided the information on the title page is limited to the list in Section (i) below, the title pages will not be counted when HUD determines the length of each section or the overall length of the narrative.

(i) Each title page should contain only:

(A) The name of the section, as described in Section IV.B.3.c. of this NOFA, *e.g.*, ''Section D: Rating Factor 1, Capacity, Narrative Response';

(B) The name of the applicant; and

(C) The name of the file that contains the narrative section.

(b) Narrative File Names and Types.

(i) No narrative section file in the application may contain more than five files. ZIP file folders may be used to combine several narrative files. Each file and ZIP file folder must be entered into the grants.gov ''Attachment Form'' in the ''Grant Application Package'' for submission.

(ii) Each file, or file within the ZIP file folder, must be formatted so it can be read by MS Word 2000 (.doc) or Adobe Acrobat as a searchable PDF file.

(iii) The name of each file, or file within the ZIP file folder, must include the information below, in the order stated:

(A) Short version of applicant's name, *e.g.*, town, city, county/parish, etc., and state; and

(B) The word ''Narrative'' and the narrative section letter (A through J), as listed in Section IV.B.3.c. of this NOFA;

(C) An example of a narrative section file name is, ''Atlanta GA Narrative A.''

(2) Attachments. Attachments are as listed in Section IV.B.3.c. of this NOFA. Each attachment should be contained in a separate file and section of the application. Each attachment that is not a HUD form should contain one title page.

(a) Attachment Title Pages. HUD will use title pages as tabs if it prints the application. Provided the information on the title page is limited to the list in Section (i) below, the title pages will not be counted when HUD determines the length of each attachment, or the overall length of the attachments. HUD forms do not require title pages.

(i) Each title page should contain only:

(A) The name of the attachment, as described in Section IV.B.3.c. of this NOFA, *e.g.*, ''Section M: Main Street Area Drawing'';

(B) The name of the applicant; and

(C) The name of the file that contains the attachment.

(b) Attachment file names and types.

(i) In the grants.gov application package, some forms are completed online and some are downloaded and completed offline. A maximum of ten attachments/ZIP file folders should be used to contain and submit the various forms and other attachments that are completed offline. Each file and ZIP file folder must be entered into the grants.gov ''Attachment Form'' in the ''Grant Application Package'' for submission.

(ii) Each file, and file within a ZIP file folder, must be formatted so it can be read by MS Word (.doc), MS Excel (.xls) or Adobe Acrobat (.pdf), preferably searchable.

(A) Third-party documents, *e.g.*, leverage commitment letters, pictures, etc., should be submitted in Adobe Acrobat (PDF) format.

(iii) Each file name must include the information below, in the order stated:

(A) Short version of applicant's name, *e.g.*, town, city, county/parish, etc., and state; and

(B) The word ''Attachment'' and the Attachment section letter (K through U), as listed in Section IV.B.3.c. of this NOFA;

(C) An example of an attachment file name is, ''Atlanta GA Attachment L''

(3) Maximum Length of Application.

(i) Page Definition and Format.

(A) For the narrative, a ''page'' contains a maximum of 23 double-spaced lines. The length of each line must be a maximum of 6½ inches. This is the equivalent of formatting to be printed on 8½″ x 11″ paper, with one inch top, bottom, left and right margins. The font must be 12-point Times New Roman. Each page must be numbered. The page numbers may be within the bottom one inch of the page, beyond the 23 lines, *e.g.*, in the footer area.

(B) For attachments, text pages should be formatted as defined as in (A) above. Third-party documents converted into PDF format must not be shrunk to fit more than one original page on each application page. Pages of HUD forms and certification formats furnished by HUD must remain as numbered by HUD.

(ii) The maximum total length of all narrative sections, including the Executive Summary and the Rating Factor responses, is 15 pages.

(iii) The maximum length of attachments is as follows:

(A) HUD forms will not be counted toward the attachment page total;

(B) For the Program Schedule, a maximum of one page;

(C) For the Map of the Main Street Area, one page. The map must be scalable and may be shrunk to fit one page from a standard size blueprint. The map must be legible when viewed in Adobe Acrobat (.pdf), which has the ability to zoom to over 1600%;

(D) Main Street Rejuvenation Master Plan (Master Plan), a maximum of 20 pages. Master Plan documents should be scanned and converted into one or more PDF files. In order to meet the size limitation, the applicant may submit only the portions of the Master Plan that pertain to subjects that are listed in Section III of this NOFA, under ''Thresholds'' and ''Program Requirements,'' and Section V of this NOFA. If those portions of the Master Plan exceed 20 pages, the applicant may summarize information that is included in those portions of the Master Plan. *By applying for this NOFA, the applicant is certifying that submitted summaries of the Master Plan accurately represent the original Master Plan;*

(E) Text submitted at the request of HUD to correct technical deficiencies will not be counted in the page limit.

c. *List of Mandatory Application Sections and Related Documents.*

(1) Summary Information:

(a) Section A: Application for Federal Assistance, form SF–424;

(b) Section B: Application Table of Contents;

(c) Section C: Executive Summary;

(2) Rating Factor Responses:

(a) Section D: Rating Factor 1, Capacity, Narrative Response;

(b) Section E: Rating Factor 2, Need for Affordable Housing, Narrative Response;

(c) Section F: Rating Factor 3, Appropriateness of Main Street Master Plan;

(d) Section G: Rating Factor 4, Appropriateness of the Main Street Affordable Housing Project;

(e) Section H: Rating Factor 5, Program Administration and Fiscal Management;

(f) Section I: Rating Factor 6, Incentive Criteria on Regulatory Barrier Removal; and

(g) Section J: Rating Factor 7, RC/EZ/EC–IIs.

(3) Attachments:

(a) Section K: HOPE VI Main Street Application Data Sheet, form HUD–52861;

(b) Section L: Program Schedule;

(c) Section M: Map of Main Street Area;

(d) Section N: Main Street Rejuvenation Master Plan;

(e) Section O: HOPE VI Budget, form HUD–52825A;

(f) Section P: 5-Year Cash Flow Proforma;

(g) Section Q: America's Affordable Communities Initiative, form HUD–27300, and related documentation;

(h) Section R: Logic Model, form HUD–96010;

(i) Section S: Race and Ethnic Data Reporting, form HUD–27061;

(j) Section T: Applicant/Recipient Disclosure/Update Report, form HUD–2880, if applicable;

(k) Section U: Certification of Consistency with the RC/EZ/EC-IIs Strategic Plan, form HUD–2990, if applicable; and

(l) Section V: Disclosure of Lobbying Activities, Standard Form LLL, if applicable.

4. *Documentation Information.*

a. *Executive Summary.*

(1) Provide an Executive Summary, not to exceed two pages. Describe your affordable housing plan. State whether you have procured a developer or whether you will act as your own developer. Briefly describe:

(a) The type of housing, *e.g.*, walk-up above retail space, detached house, etc.;

(b) The number of units and buildings;

(c) The specific plans for the Main Street Area that surrounds the Main Street Affordable Housing Project. Include income mix, basic features (such as restoration of streets), and a general description of mixed-use and non-housing Main Street rejuvenation components.

(d) The number of homeownership units in your proposal, if any;

(e) The amount of HOPE VI funds you are requesting. See Section IV.E. of this NOFA for funding limits; and

(f) A list of major non-HOPE VI funding sources for the Main Street Affordable Housing Project, if any.

b. *HOPE VI Main Street Application Data Sheet, form HUD–52861, in MS Excel format (.xls).*

(1) This form consists of several Excel worksheets. Instructions for filling in the data worksheets are located on the left-hand worksheet, with the tab name, ''Instructions.'' The worksheets should be filled out from the left-most tab toward the right. In this way, the information that the applicant provides will automatically be inserted to the right into other worksheets as needed.

(2) List of Match and Leverage Resources. To meet the leverage resources threshold stated in Section III.C.1 of this NOFA, the applicant must provide a leverage amount equal to or greater than the applicant's requested grant amount. Allowable resources may be cash contributions or contributions of in-kind services. For each of the applicant's leverage resources, the applicant's list of leverage resources must include:

(a) The name of the entity providing the resource;

(b) The name of a contact for the entity providing the resource that is familiar with the contribution toward this application;

(c) The telephone number of a contact for the resource who is familiar with the contribution toward this application;

(d) The leverage amount;

(e) Whether the leverage amount is cash or in-kind services; and

(f) The period in which the leverage resource was expended or will be received, *e.g.*, expended during 2003, or, for a future leverage resource, the period in which it will be furnished, *e.g.*, over the next two years.

c. *Program Schedule.* The application must include a program schedule for the applicant's Project.

(1) The schedule must include, at a minimum:

(a) Grant Agreement Execution Date. Assume that the Grant Agreement Execution Date will be within 90 days of the grant award notification date;

(b) Date of closing of financing of the first phase, in months after the grant award date;

(c) Date of the start of construction of the first housing unit, in months after the grant award date; and

(d) Date of the completion of construction of the last housing unit, in months after the grant award date.

(2) The Program Schedule must reflect the Reasonable Time-Frame and Development Proposal time requirements stated in Section VI.B.1. of this NOFA. The Program Schedule must also state that grant activities will be completed within the 30-month term of the grant.

d. *Map of Main Street Area.* The drawing must show the boundaries of a Main Street Area and denote each housing site that is included in the applicant's project. The boundaries may include streets, highways, railroad tracks, etc., and natural boundaries such as streams, hills, and ravines, etc.

e. *Main Street Rejuvenation Master Plan.* The applicant's Main Street Rejuvenation Master Plan must address, at a minimum, the eight subjects listed in ''Main Street Rejuvenation Master Plan,'' in Section I.D.13. of this NOFA. The Master Plan must be as it existed on or before the application submission date of this NOFA. It is not necessary to include a market analysis for affordable housing that is needed in the Main Street Area or applications to the Historic Registry or list of Historic Districts. The applicant may submit only the portions of the Master Plan that pertain to subjects that are listed in Section III of this NOFA, under ''Thresholds,'' ''Program Requirements,'' and Section V of this NOFA. If those portions of the Master Plan exceed 20 pages, the applicant may summarize information that is included in those portions of the Master Plan. By applying for this NOFA, the applicant is certifying that submitted summaries of the Master Plan accurately represent the original Master Plan. See Section IV.B.5. of this NOFA for certifications that the applicant is making when the applicant applies for funds from this NOFA.

f. *Cash Flow Proforma.* The applicant must include a five-year estimate of project income, expenses, and cash flow (''proforma'') that shows that the project will be financially viable over the long term. In the proforma, the applicant should assume that the initial occupancy period is a minimum of two years. Note that initial funding of reserves with grant funds is NOT an allowable use of funds from this NOFA. Reserves may be funded through leverage resources. Viability must be shown for the entire project, i.e., all buildings that include affordable housing units that are partially or wholly funded with HOPE VI funds. The applicant may include one proforma for the entire project, or several proformas, broken out for the various portions of the project, as fits the circumstances best. For example, separate proformas may include viability documentation for:

(1) All buildings together;

(2) Separately for each building in the project; or

(3) Separately for each owner entity in the project.

g. *HOPE VI Budget.* Enter the amount you are requesting through this NOFA. In ''Part I: Summary,'' it is not necessary to fill in the columns entitled, ''Previous Authorized Amounts of Funds in LOCCS,'' ''Changes Requested in this Revision,'' and ''HUD-Approved Total Authorized Amount of Funds in LOCCS.'' In ''Part II: Supporting Pages,'' it is necessary only to fill in columns 2 and 3.

h. *Logic Model.* It is not necessary to fill in columns 6, 7, 8 and 9. This information will be collected at the end of the grant term. See Section VI.C.3. of this NOFA.

i. Appropriateness of Application. Section 24(e)(1) of the 1937 Act requires that the application demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives. An example of an alternative proposal would be proposing a range of resident incomes, housing types (rental, homeownership, market-rate, townhouse, detached house, etc.), or costs which cannot be supported by the existing neighborhood demographics. Briefly, contrast your proposal and an alternative, and include the discussion in the executive summary.

5. *Certifications:* By manually or electronically signing the SF–424, the applicant certifies to the following:

a. The Main Street Rejuvenation Master Plan that is included as part of this application existed for three years prior to the application submission date, and is mentioned in the applicant's Consolidated Plan, if one exists;

b. Prior to the publication date of this NOFA, the Main Street Affordable Housing Project was, and continues to be, included in the Main Street Rejuvenation Master Plan;

c. Submitted summaries of the Master Plan accurately represent the original Master Plan;

d. The applicant or its developer entity recognized by the applicant has site control of all properties where affordable housing will be developed;

e. All project sites have zoning that allows for residential development;

f. All Match resources included in the application are ''firmly committed.'' See the definition of ''firmly committed'' in Section I.D. of this NOFA;

g. All leverage resources included in the application are ''firmly committed.'' See the definition of ''firmly committed'' in Section I.D. of this NOFA;

h. Historic preservation requirements in Section 106 of the *National Historic Preservation Act of 1966 (NHPA)* will be fulfilled, where applicable.

i. Environmental requirements stated in the NOFA will be fulfilled;

j. Building standards stated in the NOFA will be fulfilled;

k. Relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) will be fulfilled;

l. Fair Housing requirements will be followed and fulfilled; and

m. The ''Certification of Consistency with RC/EZ/EC Strategic Plan'' (form HUD–2990), if included in the application, applies.

6. *Rating Factor Format.* The narrative portion of the application is the executive summary and the applicant's response to the rating factors. To ensure proper credit for information applicable to each rating factor, the applicant should include application Section references, as listed in Section IV.B.3.c. of this NOFA, with key words or phrases searchable to supporting documentation and language, as appropriate for rating factor responses. The applicant's rating factor responses should be as descriptive as possible, ensuring that every requested item is addressed. The applicant should make sure to include all information requested in the instructions of this NOFA. Although information from all parts of the application will be taken into account in rating the various factors, if supporting information cannot be found by the reviewer, it cannot be used to support a factor's rating.

7. *Rating Factor Documentation.*

a. *References to the Main Street Rejuvenation Master Plan.* (1) The purpose of referencing the Main Street Rejuvenation Master Plan is to decrease the amount of rating factor narrative that the applicant finds necessary to achieve its maximum rating. It is NOT necessary to repeat in the rating factor narratives the information that the applicant included in its Master Plan.

(2) Each reference to the Master Plan should be specific, including the page number of the Master Plan where the information can be found and a reference to identify its location on the page. More than one specific reference to the Master Plan may be included for any one subject or rating factor narrative.

b. *Team Experience and Key Personnel Knowledge.* Documentation that demonstrates knowledge and experience may include, but is not limited to:

(1) A list and short description of affordable housing projects that the members of the applicant's team have completed;

(2) A list and short description of contracts or grants completed by the members of the applicant's team for similar housing development or services;

(3) Third-party evaluation reports;

(4) Résumés of key personnel; and

(5) Other documentation showing knowledge and experience of affordable housing development or construction.

c. *Need for Affordable Housing.* Documentation of need for affordable housing is based on a comparison of HUD's Fair Market Rent (FMR) for the applicant's Primary Metropolitan Statistical Area/Metropolitan Statistical Area (''PMSA/MSA'') or nonmetropolitan county/parish and the maximum amount of rent that a low-income family living in that PMSA/MSA or nonmetropolitan county/parish can afford to pay.

(1) PMSA/MSAs and nonmetropolitan counties are as listed in HUD's document titled ''FY 2004 State List of Counties (and New England Towns) Identified by Metropolitan and Nonmetropolitan Status' at *http://www.huduser.org/datasets/il/IL04/Definitions04.doc.*

(2) The FMRs are listed at *http://www.huduser.org/intercept.asp?loc=/Datasets/FMR/FMR2005F/Final_FY2005_SCHEDULEB1.pdf*

(3) The maximum, affordable low-income rent is based on HUD's Income Limits, as listed at *http://www.huduser.org/datasets/il/IL04/Section8_IncomeLimits_2004.doc* for low-income families. The maximum, affordable low-income rent is equal to the Median Family Income for low-income families, divided by 12, divided further by 0.3 (30 percent).

(4) In performing the comparison, the applicant must use the 4-person family size and the 3-bedroom unit size. The application must include the income limit and maximum, affordable low-income rent for a 4-person family, and the Fair Market Rent for a 3-bedroom unit.

d. *Program Administration and Fiscal Management.* Documentation that demonstrates program administration and fiscal management MUST include:

(1) A description of the procurement system structure that the applicant has in place, including internal controls;

(2) A description of the fiscal management structure that the applicant has in place, including fiscal controls and internal controls;

(3) A summary of the results of the last available annual external, independent audit, including findings, if any;

(4) A list of any findings issued or material weaknesses found by HUD or other federal or state agencies. A description of how the applicant addressed the findings and/or weaknesses. If no findings or material weaknesses were exposed or existed on or before the publication date of this NOFA, include a statement to that effect in the narrative; and

(5) A description of the applicant's management control structure, including management roles and responsibilities and evidence that the applicant's management is results-oriented, e.g., existing production, rental, and maintenance goals.

e. *Incentive Criteria on Regulatory Barrier Removal.*

(1) The applicant must include the completed form HUD–27300 in the application, along with background documentation where required by the form.

f. *RC/EZ/EC–IIs.*

(1) To receive the two bonus points for performing the NOFA activities in a RC/EZ/EC–II area, the applicant must include the ''Certification of Consistency with RC/EZ/EC Strategic Plan'' (form HUD–2990) in the application. The form HUD–2990 needs to be filled out, but does not need to be signed. See Section IV.B.5. of this NOFA, ''Certifications.''

C. Submission Dates and Times

1. *Application submission date.* The application submission date is September 6, 2005.

2. *No Facsimiles or Videos.* HUD will not accept for review, evaluation, or funding, any entire application sent by facsimile (fax). However, third-party documents or other materials sent by facsimile in compliance with the instructions under Section IV. F., ''Other Submission Requirements,'' and received by the application submission date will be accepted. Facsimile corrections to technical deficiencies will be accepted. Also, videos submitted as part of an application will not be viewed.

D. Intergovernmental Review

1. *Executive Order 12372, Intergovernmental Review of Federal Programs.* Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct federal development. HUD implementing regulations are published in 24 CFR part 52. The executive order allows each state to designate an entity to perform a state review function. The official listing of State Points of Contact (SPOCs) for this review process can be found at *http://www.whitehouse.gov/omb/grants/spoc.html.* States not listed on the Web site have chosen not to participate in the intergovernmental review process and, therefore, do not have a SPOC. If the applicant's state has a SPOC, the applicant should contact it to see if it is interested in reviewing the application prior to submission to HUD. The applicant should allow ample time for this review process when developing and submitting the applications. If the applicant's state does not have a SPOC, the applicant may send applications directly to HUD.

E. Funding Restrictions

1. Grant funds shall be used only to provide assistance to carry out eligible affordable housing activities, as stated in Section I.E. of this NOFA.

2. *Non-allowable Costs and Activities.* Although leverage resources may be used to fund the following activities or expenses, grant funds from this NOFA CANNOT be used for:

a. Total demolition of a building (including where a building foundation is retained);

b. Sale or lease of the Main Street Affordable Housing Project site (excluding lease or transfer of title for the purposes of obtaining tax credits, provided that the recipient owner entity of the title or lease includes the applicant);

c. Funding of reserves;

d. Payment of administrative costs of the applicant;

e. Payment of legal fees;

f. Development of public housing replacement units (defined as units that replace disposed of or demolished public housing) or use as Housing Choice Vouchers;

g. Transitional security activities;

h. Main Street technical assistance consultants or contracts; and

i. Costs incurred prior to grant award, including the cost of application preparation.

3. *Cost Controls.*

a. The total amount of HOPE VI funds expended shall not exceed the Total Development Cost (''TDC''), as published by HUD in NOTICE PIH 2003–8 (HA), ''Public Housing Development Cost Limits,'' for the number of affordable housing units that will be developed through this NOFA. The TDC limits can be found at *http://www.hudclips.org/sub_nonhud/cgi/nph-brs.cgi?d=PIHN&s1=2003–8&op1=AND&l=100&SECT1=TXT_*

HITS&SECT5=HEHB&u=./hudclips.cgi& p=1&r=2&f=G.

b. Cost Control Safe Harbors apply. Safe Harbors may be found at *http://www.hud.gov/utilities/intercept.cfm?/offices/pih/programs/ph/hope6/grants/admin/safe_harbor.pdf.*

4. *Community and Supportive Services (''CSS'').* Furnishing CSS to residents is voluntary, except for homeownership counseling when the application includes development of homeownership units. If the applicant chooses to furnish CSS, expenditures are limited to 15 percent of the grant amount.

5. Statutory time limit for award, obligation, and expenditure.

a. The estimated award date will be September 30, 2005.

b. Funds available through this NOFA must be obligated on or before September 30, 2005.

c. In accordance with 31 U.S.C. 1552 (Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 935; Pub. L. 101–510, div. A, title XIV, Sec. 1405(a)(1), Nov. 5, 1990, 104 Stat. 1676.), all HOPE VI funds that were appropriated in FY 2004 must be expended by September 30, 2010. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

6. *Withdrawal of Funding.* If a grantee under this NOFA does not proceed within a reasonable time frame, HUD shall withdraw any grant amounts that have not been obligated. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for assistance.

7. *Transfer of Funds.* HUD has the discretion to transfer funds available through this NOFA to any other HOPE VI program.

8. *Limitation on Eligible Expenditures.* Expenditures on services, equipment, and physical improvements must directly relate to project activities allowed under this NOFA.

9. *Pre-Award Activities.* Award funds may not be used to reimburse pre-award expenses.

F. Other Submission Requirements

Application Submission and Receipt Procedures. This section provides the application submission and receipt instructions for HUD program applications. Please read the following instructions carefully and completely, as failure to comply with these procedures may disqualify your application.

1. *Electronic Delivery.* HUD requires applicants to submit their applications electronically through *http://www.grants.gov. HUD will not accept or consider any applications that have been submitted through any other method, unless a waiver is granted.* See Section IV of the General Section.

2. *What to Expect on grants.gov.* The following describes what to expect when you go to apply online using grants.gov/Apply:

a. *Getting Started.* Once on the site, you will find easy-to-follow, step-by-step instructions that will enable you to apply for HUD funds. The *http://www.grants.gov* feature includes a simple, unified application process to enable applicants to apply for grants online. There are six ''Get Started'' steps to complete at grants.gov. The information applicants need to understand and execute the steps is at *http://www.grants.gov/GetStarted.* Applicants should read the Get Started steps carefully. The site also contains registration checklists to help you walk through the process. HUD recommends that you download the checklists and prepare the information requested before beginning the registration process. Reviewing information required and assembling it before beginning the registration process will save you time and make the process faster and smoother.

b. *DUNS Requirement.* All applicants applying for funding, including renewal funding, must have a Dun and Bradstreet Universal Data Numbering System (DUNS) number. The DUNS number must be included in the data entry field labeled ''Organizational Duns'' on the form SF–424. Instructions for obtaining a DUNS number can be found at either of the following Web sites: *http://www.hud.gov/offices/adm/grants/duns.cfm* or *http://www.grants.gov/GetStarted.*

c. *Faulty Registration Warning.* HUD has found that the primary reason for application submission problems through grants.gov is faulty or incomplete registration by the applicant. The applicant must register as an entity/organization with the Federal Central Contractor Registry. The applicant must also register its Authorized Organization Representative (AOR), who is the electronic signatory.

d. *Central Contractor Registry and Credential Provider Registration.* In addition to having a DUNS number, applicants applying electronically through grants.gov must register with the Federal Central Contractor Registry and with a Credential Provider. The *http://www.grants.gov* Web site at *http://www.grants.gov/GetStarted* provides step-by-step instructions for registering in the Central Contractor Registry and registering with a credential provider. All applicants filing electronically must register with the Central Contractor Registry and receive credentials from the grants.gov credential provider in order to apply online. Failure to register with the Central Contractor Registry and credential provider will result in your application being rejected by the grants.gov portal.

The registration process is a separate process from submitting an application. Applicants are, therefore, encouraged to register early. The registration process can take approximately two weeks to be completed. Therefore, registration should be done in sufficient time to ensure it does not impact your ability to meet required submission deadlines. You will be able to submit your application online anytime after you receive your e-authentication credentials.

e. *Authorized Organization Representative (AOR) Electronic Signature.* Applications submitted through grants.gov constitute submission as electronically signed applications. The registration and e-authentication process establishes the AOR. When you submit the application through grants.gov, the name of your authorized organization representative on file will be inserted into the signature line of the application. Applicants must register the individual who is able to make legally binding commitments for the applicant organization as the AOR.

3. *Instructions.* Instructions on how to submit an electronic application to HUD via grants.gov:

a. *Applying using grants.gov.* Grants.gov has a full set of instructions on how to apply for funds on its Web site at *http://www.grants.gov/CompleteApplication.* The following provides simple guidance on what you will find on the *http://www.grants.gov/Apply* site. Applicants are encouraged to read through the page entitled, ''Complete Application Package'' before getting started. Grants.gov allows applicants to download the application package, instructions, and forms that are incorporated in the instructions, and work offline. In addition to forms that are part of the application instructions, there will be a series of electronic forms that are provided utilizing a PureEdge reader. The PureEdge Reader is available free for download from the grants.gov/Get Started site. The PureEdge Reader allows applicants to read the electronic files in a format identical to any other Standard or HUD form. The PureEdge forms have content-sensitive help. To use this feature you will need to click on the icon at the top of the page that features an arrow with a question mark. This engages the content-sensitive help for each field you will need to complete on the electronic form. The PureEdge forms can be downloaded and saved on your hard drive, network drive(s), or compact disks (CDs). Because of the size of the application, HUD recommends downloading the application to your computer hard drive. The instructions include this NOFA and any required forms that have not been converted into PureEdge forms. The instructions will also include a checklist to ensure that you are provided all the required information for submitting your application. Please review the checklist to ensure that your application contains all the required materials.

b. *Mandatory Fields on PureEdge Forms.* In the PureEdge forms you will note fields that will appear with a yellow background color on the data fields to be completed. These fields are mandatory fields and must be completed to successfully submit your application.

c. *Completion of SF–424 Fields First.* The PureEdge forms are designed to fill in common required fields such as the applicant name and address, DUNS number, etc., on all PureEdge electronic forms. To trigger this feature, an applicant must first complete the SF–424 information. Once it is completed the information will transfer to the other forms. This is an important feature to remember, particularly if you plan on submitting documents using the electronic facsimile feature discussed below. HUD will rely on the name, address, CFDA, and DUNS number fields on the electronic facsimile cover page populated from the completed SF–424, to route documents received by facsimile to the proper application. To ensure that your materials are properly routed, first complete the SF–424 cover page. After the SF–424 is complete, download the Facsimile Transmittal cover page to use the electronic facsimile feature described below if you need to use this feature. If you are relying on third parties to transmit matching fund letters or certifications, you can complete the SF–424, then download the Facsimile Transmittal cover page and provide a hard copy or electronic copy to the third party. Third parties can then directly submit the information to HUD using the pre-filled Facsimile Transmittal cover page, provided they use the correct fax number provided for the program.

d. *Submission of Third Party Letters, Certifications, or Narrative Statements.* In addition to forms, the NOFA may require the submission of other documentation such as third-party letters, certifications, or program narrative statements. This section discusses how you should submit this additional information electronically as part of your application:

(1) Narrative Statements to the Factors for Award. If you are required to submit narrative statements, you should submit them as an electronic file. Each response to a Factor for Award should be developed as a separate file labeled with the appropriate factor name, *e.g.*, Factor 1 Capacity and submitted as part of your electronic application.

(2) Third-Party Letters, Certifications Requiring Signatures, and Other Documentation. The following two options, (a) and (b), apply to applicants who are required to submit documentation from organizations providing matching or leveraging funds; documentation of 501(c)(3) status or incorporation papers; documents that support the need for the program; Memoranda of Understanding (MOUs); or documentation to support your organization's claims regarding work that has been done to remove regulatory barriers to affordable housing:

(a) Scanning Documents to Create Electronic Files. Of the two third-party document submission options, scanning of documents into PDF format and including them as attachment files is HUD's preferred method for this NOFA. Electronic files must be labeled so the reader will know what the file contains. Match or leveraging letters can be scanned into a single folder or the applicant can create a separate file for each scanned letter and label them accordingly. All scanned files should be placed together in a zipped folder and then attached to the application package submitted to grants.gov as part of the application submission; or

(b) Electronic Facsimile Required Documentation. Applicants without available scanning equipment may submit the required documentation to HUD via facsimile (fax). The electronic facsimile method may only be used to submit attachments that are part of your electronic application. HUD will not accept entire applications via fax. Applications submitted entirely via fax will be disqualified.

To submit documents using the electronic facsimile method, applicants MUST USE form HUD–96011, Facsimile Transmittal, as the cover page for each faxed document. The HUD–96011 MUST NOT be covered by the applicant's own fax cover sheet. If the HUD–96011 is not the first page faxed, the document may not be able to be identified and may not be made part of the electronically submitted application. The form HUD–96011 is an electronic form and is part of the applicant's downloaded electronic application obtained from *http://www.grants.gov/Apply.* Applicants must fax their information to the following fax number: 800–HUD–1010. Each document must be faxed as a separate submission to avoid fax transmission problems. When faxing several documents, applicants must use the form HUD–96011 as the cover sheet for each document (e.g., Letter of Matching or Leveraging Funds, Memorandum of Understanding, Certification of Consistency with the Consolidated Plan, etc.). Your facsimile machine should provide you with a record of whether your transmission was received by HUD. If you get a negative response or a transmission error, you should resubmit the document until you confirm that HUD has received your transmission. HUD will not acknowledge that a fax was received successfully. HUD will electronically receive the fax, read it with an optical character reader, and attach it to the application submitted via grants.gov. Electronic facsimile transmissions may be sent at any time before the application submission date. HUD will store the information and attach it to the electronic application when HUD receives it from grants.gov.

e. *Customer Support.* The grants.gov Web site provides customer support via (800) 518–GRANTS (this is a toll-free number) or through e-mail at support@grants.gov. The customer support center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday, except federal holidays, to address grants.gov technology issues. For technical assistance on program-related questions, contact the number listed in Section VII.B. of this NOFA.

f. *Internet Connections, Time-outs and Submission Errors.*

(1) HUD highly suggests that the applicant use broadband Internet connections to submit the application, as opposed to dial-up service. Broadband connections may be ISDN, DSL, Cable, T1, etc. Submission problems are likely to decrease as the speed of the applicant's broadband connection increases. If the applicant organization does not have a broadband connection, the PureEdge program and the application may be copied to a CD, transferred to a computer that has such a connection, and submitted from that computer. Libraries and office support stores (Kinko's, etc.) are likely to have broadband connections.

(2) If the actual submission of your application, i.e., uploading to grants.gov, exceeds one hour, the

applicant should request ''second-level'' help at the above grants.gov support line. On a dial-up connection, after an hour has gone by, it is likely that the applicant's Internet Service Provider (ISP) has timed out and cut the applicant's Internet connection.

(3) If the applicant's browser states that an MEC error has occurred, the applicant should request second-level help from grants.gov.

g. *Grants.gov Tips and Tools.* Tips on applying through grants.gov and Frequently Asked Questions concerning grants.gov may be found at HUD's HOPE VI Web site, *http://www.hud.gov/offices/pih/programs/ph/hope6/,* and HUD's Grants Administration Web sites, *http://www.hud.gov/offices/adm/grants/egrants/grantsgovfaqs.pdf* and *http://www.hud.gov/offices/adm/grants/egrants/faqs52305.pdf.* Applicants also may consult the FAQ link at the top of the Grants.gov Web page. Additionally, on the ''Apply for Grants'' section of the Grants.gov Web site (*http://www.grants.gov/Apply*), links to tips on application submission (''Application Submission Tips'') and error messages (''Application Error Tips'') are posted on the left-hand side of the webpage under the header ''Tips and Tools.'' Please note the additional helpful information posted here such as ''Convert Documents to PDF'' and ''Download PureEdge Viewer.'' Applicants should also review any alerts posted under the ''Alerts'' header, which is also found on the left-hand side of the page.

4. *Waiver of Electronic Submission Requirement.* During FY2005, HUD will require electronic applications to be submitted through *www.grants.gov* unless the applicant has received a waiver from the Department. HUD regulations at 24 CFR 5.110 permit waivers of regulatory requirements to be granted for cause. If you are unable to submit your application electronically, you may, in writing, request a waiver from this requirement. Your waiver request must state the basis for the request and explain why electronic submission is not possible. The basis for waivers for cause may include but are not limited to: (a) Lack of available Internet access in the geographic location in which the applicant is located or, (b) a physical disability of the applicant prevents the applicant from accessing or responding to the electronic application.

The waiver request should also include an e-mail and/or name and mailing address where responses can be directed. Applicants must submit waiver requests to the Assistant Secretary for Public and Indian Housing, who is responsible for the program under which you are seeking funding. To ensure time for processing, the waiver request must be submitted to HUD in writing at least 5 days prior to the application submission date.

To avoid a delay in the process, waiver requests should be sent by United States Postal Service Express Mail. You, the applicant, should retain a receipt for the mailing showing the date submitted to the Postal Service. Via e-mail, HUD will acknowledge receipt of the waiver request, if an e-mail address is provided, or will do so via United States Postal Service Express Mail or other means available. HUD will not make determinations or respond to waiver requests via the telephone. Each waiver request will be reviewed and a determination made to the applicant that indicates whether or not the waiver has been granted. In the event a waiver is granted, the due date for the mailed application delivery shall not be later than the due date for electronic applications. Applicants receiving a waiver will be expected to follow the submission instructions immediately below.

a. *Submission Instructions for Applicants Receiving Waiver of Electronic Submission.* Applicants receiving a waiver of the electronic submission requirements must submit their complete applications in paper copy as follows:

(1) *Submission Using the United States Postal Service.* Beginning in FY 2005, HUD will no longer accept hand deliveries of applications. Applicants who receive a waiver and are therefore allowed to submit paper applications must submit them via the United States Postal Service using Express Mail.

5. *Timely Receipt Requirements and Proof of Timely Submission.*

a. *Electronic Submission.* All applications must be fully received by *http://www.grants.gov* by 11:59:59 p.m. eastern time on the due date established for each program NOFA.

Proof of timely submission is automatically recorded by grants.gov. An electronic time stamp is generated within the system when the application is successfully received by grants.gov. The applicant will receive an acknowledgement of receipt and a tracking number from grants.gov with the successful transmission of the application. Applicants should print this receipt and save it, along with facsimile receipts for information provided by fax, as proof of timely submission. When HUD successfully retrieves the application from grants.gov, HUD will provide an electronic acknowledgment of receipt to the e-mail address provided on the SF–424. Proof of Timely Submission shall be the date and time that grants.gov receives your application submittal and the date HUD receives those portions of your application submitted by fax. All fax transmissions must be received by the application submission date and time.

Applications received by grants.gov, after the established due date for the program, will be considered late and will not be considered for funding by HUD. Similarly, applications will be considered late if information submitted by facsimile as part of the application is not received by HUD by the established due date. Please take into account the transmission time required for submitting your application via the Internet and the time required to submit any related documents via electronic facsimile. HUD suggests that applicants submit their applications during the operating hours of the grants.gov Support Desk, so that if there are questions concerning transmission, operators will be available to walk you through the process. Submitting your application during the Support Desk hours will also ensure that you have sufficient time for the application to complete its transmission prior to the application deadline.

Applicants using dial-up connections should be aware that transmission should take some time before grants.gov receives it. Grants.gov will provide either an error or a successfully received transmission message. The grants.gov Support Desk reports that some applicants abort the transmission because they think that nothing is occurring during the transmission process. Please be patient and give the system time to process the application. Uploading and transmitting many files, particularly electronic forms with associated XML schemas, will take some time to be processed.

b. *Applications Receiving Waivers to Submit a Paper Copy Application.*

Applicants granted a wavier to the electronic submission requirement must use the United States Postal Service (USPS) Express Mail to submit their applications to HUD. Applicants must take their application to a Post Office to get a receipt of mailing that provides the date and time the package was submitted to the USPS. The due date and time is the same for paper copies as for electronic copies. The USPS no longer allows large packages to be dropped in a mailbox. USPS rules now require that large packages be brought to the postal facility for mailing. The USPS, in many areas, has made a practice of returning large packages to the sender that have been dropped in a mail collection box. Packages submitted by due date and time and received by HUD no later than five days from the established due date will receive funding consideration. If the USPS does not have a digital time stamp to record the submission time, HUD will accept a receipt that has been obtained from the USPS with a postmark or dates receipt showing receipt by the Postal Service no later than the application submission date. Applicants will not receive funding consideration if their applications are determined to be late, and who cannot furnish HUD with a receipt from the USPS that verifies the package was submitted to the USPS prior to the deadline date and time.

c. *Late applications.* Late applications, whether received electronically or in hard copy, will not receive funding consideration. HUD will not be responsible for directing or forwarding applications to the appropriate location. Applicants should pay close attention to these submission and timely receipt instructions as they can make a difference in whether HUD will accept your application for funding consideration.

d. *No Facsimiles of Entire Application.* HUD will not accept fax transmissions from applicants who receive a waiver to submit a paper copy application. Paper applications must be complete and submitted in their entirety, via USPS Express Mail.

6. *General Section References.* The following sub-sections of Section IV of the General Section are hereby incorporated by reference:

a. Addresses to Request Application Package;

b. Application Kits;

c. Guidebook and Further Information

d. Forms. The following HUD standard forms are not required as part of the application for this NOFA:

(1) Grant Application Detailed Budget (HUD–424–CB);

(2) Grant Application Detailed Budget Worksheet (HUD–424–CBW);

e. Certifications and Assurances;

f. Submission Dates and Times;

V. Application Review Information

A. Selection Criteria (Rating Factors)

1. *Rating Factor 1: Capacity (up to 30 points).*

This factor addresses whether the Applicant Team has the capacity and organizational resources necessary to successfully implement the proposed activities within the grant period.

a. *Past Experience (up to 15 points).*

(1) The applicant will earn a maximum of 15 points if the applicant demonstrates that the applicant's team has extensive experience of affordable housing development and historic preservation requirements, and is on schedule in implementing the Main Street Master Plan. That is, the applicant's team has developed or rehabilitated more than 5 affordable housing projects and 3 Historic Register or traditional architecture projects over the past three years.

(2) The applicant will earn a maximum of 10 points if the applicant demonstrates that the applicant's team has adequate experience of affordable housing development and historic preservation requirements, and is on schedule in implementing the Main Street Master Plan. That is, the applicant's team has developed or rehabilitated more than 2 affordable housing projects and 1 Historic Register or traditional architecture projects over the past three years.

(3) The applicant will earn a maximum of 6 points if the applicant demonstrates that the applicant team has extensive experience, gained over the past three years, of affordable housing development and historic preservation requirements, but is behind schedule in implementing the Main Street Master Plan.

(4) The applicant will earn a maximum of 3 points if the applicant demonstrates that the applicant team has adequate experience, gained over the past three years, of housing development and historic preservation requirements, but is behind schedule in implementing the Main Street Master Plan.

(5) The applicant will earn a maximum of 0 points if the applicant cannot demonstrate that its team has at least adequate experience of housing development and historic preservation requirements, whether implementation of the Main Street Master Plan is on schedule or not.

b. *Knowledge of Key Personnel (up to 10 points).*

(1) The applicant will earn a maximum of 10 points if the applicant demonstrates that its key personnel have extensive knowledge, gained over the past three years, of affordable housing development and historic preservation requirements.

(2) The applicant will earn a maximum of 5 points if the applicant demonstrates that the applicant team's key personnel have adequate knowledge, gained over the past three years, of affordable housing development and historic preservation requirements.

(3) The applicant will earn a maximum of 0 points if the applicant cannot demonstrate that its key personnel have at least adequate knowledge, gained over the past three years, of housing development and historic preservation requirements.

c. *Tracking and Reporting System for Production Milestones (up to 5 points).*

(1) The applicant will earn a maximum of 5 points if the applicant demonstrates that a tracking and reporting system for key production milestones has existed and has been in use continuously for the Main Street Area rejuvenation effort, and the applicant demonstrates how the tracking and reporting system will be used to implement a grant awarded through this NOFA.

(2) The applicant will earn a maximum of 3 points if a tracking and reporting system exists as of the application submission date (*i.e.*, was developed as a result of this NOFA), but has not been used on the Main Street Area rejuvenation effort, provided that the applicant demonstrates how it will be used to implement a grant awarded through this NOFA.

(3) The applicant will earn a maximum of 1 point if a tracking and reporting system does not exist, and has not existed in the past, as of the application submission date, but the applicant demonstrates how such a system will be used to implement a grant awarded through this NOFA.

(4) The applicant will receive 0 points if:

(a) A tracking and reporting system does not exist; or

(b) The applicant does not demonstrate how one will be used to implement a grant awarded through this NOFA.

2. *Rating Factor 2: Need for Affordable Housing (up to 10 points).*

a. For the applicant's PMSA/MSA or nonmetropolitan county/parish, if the ratio of the maximum affordable rent for a 4-person family to the FMR of a 3-bedroom size unit (affordable rent divided by FMR) is equal to or less than 0.4, the applicant will receive 10 points.

b. For the applicant's PMSA/MSA or nonmetropolitan county/parish, if the ratio of the maximum affordable rent for a 4-person family to the FMR of a 3-bedroom unit (affordable rent divided by FMR) is greater than 0.4, and is equal to or less than 0.6, the applicant will receive 7 points.

c. For the applicant's PMSA/MSA or nonmetropolitan county/parish, if the ratio of the maximum affordable rent for a 4-person family to the FMR of a 3-bedroom size unit (affordable rent divided by FMR) is greater than 0.6, but is equal to or less than 0.8, the applicant will receive 4 points.

d. For the applicant's PMSA/MSA or nonmetropolitan county/parish, if the ratio of the maximum affordable rent for a 4-person family to the FMR of a 3-bedroom size unit (affordable rent divided by FMR) is greater than 0.8, the applicant will receive 0 points.

3. *Rating Factor 3: Appropriateness of the Main Street Master Plan (up to 20 points).*

a. *Master Plan Requirements (up to 6 points).*

(1) The applicant will receive 6 points if the application demonstrates that the Master Plan includes all 6 elements required, as listed below. One point will be deducted from the maximum of 6 points for each element that is not included in the Master Plan. The applicant should evidence this by making specific references to pages in the Master Plan. The Master Plan must at a minimum:

(a) Have been prepared by an architect, land planner, or qualified planning professional for the applicant or its recognized developer entity.

(b) Describe the proposed Main Street Rejuvenation redevelopment strategies;

(c) Include a map indicating the Main Street Area;

(d) Include a narrative that refers to the map and describes the various planned redevelopment actions;

(e) Include the development of affordable housing; and

(f) Include a list of properties where affordable housing will be rehabilitated or developed. The list of properties must have been included in the Main Street Master Plan on or before the application submission date. The properties must be described by lot/block number, street address, legal description, or other exact description.

b. *Master Plan Qualities (up to 14 points).*

(1) Commitment to Historic or Traditional Architecture.

(a) The applicant will receive 5 points if the applicant's Master Plan demonstrates a strong commitment to the preservation of historic or traditional architecture.

(b) The applicant will receive 3 points if the applicant's Master Plan addresses the preservation of historic or traditional architecture but does not convey a strong commitment to it.

(c) The applicant will receive 0 points if the applicant Master Plan does not address the preservation of historic or traditional architecture.

(2) Design Guidelines.

(a) The applicant will receive 2 points if the applicant's Master Plan contains specific design guidelines that relate to historic or traditional architecture, and that promote universal design, as described in Section III.C.2. of this NOFA.

(b) The applicant will receive 1 point if the Master Plan contains general design guidelines.

(c) The applicant will receive 0 points if the Master Plan does not contain design guidelines.

(3) Mission Statement.

(a) The applicant will receive up to 1 point if the applicant's Master Plan contains a well-defined mission statement that addresses the needs of the Main Street Area and includes, and is relevant to, local community conditions. The applicant should evidence this by making specific references to pages in the Master Plan.

(b) The applicant will receive 0 points if the applicant's Master Plan does not include a well-defined mission statement.

(4) Public and Private Support.

(a) The applicant will receive 3 points if the applicant's Master Plan has received strong local public and private sector support demonstrated by long-term (at least two years of) financial and in-kind service leverage commitments to the Main Street Area equal to or greater than 200 percent of the applicant's requested grant amount.

(b) The applicant will receive 2 points if the applicant's Master Plan has received strong local public and private sector support demonstrated by long-term (at least two years of) financial and in-kind service leverage commitments to the Main Street Area equal to or greater than 150 percent, but less than 200 percent of the applicant's requested grant amount.

(c) The applicant will receive 1 point if the applicant's Master Plan has received strong local public and private sector support demonstrated by long-term (at least two years of) financial and in-kind service leverage commitments to the Main Street Area equal to or greater than 100 percent, but less than 150 percent of the applicant's requested grant amount.

(5) Promotion and Marketing.

(a) The applicant will receive 3 points if the applicant's Master Plan sets forth a plan to promote and market the Main Street Area rejuvenation effort to parties that may be involved in the rejuvenation effort and to possible future residents of the Main Street Affordable Housing Project, including (in accordance with affirmative fair housing marketing requirements) the population that is least likely to apply.

(b) The applicant will receive 2 points if the applicant's Master Plan includes a discussion of both promotion and marketing of the Main Street Area rejuvenation effort to parties that may be involved in the rejuvenation effort and to possible future residents of the Main Street Affordable Housing Project, including (in accordance with affirmative fair housing marketing requirements) the population that is least likely to apply.

(c) The applicant will receive 1 point if the applicant's Master Plan includes a discussion of either promotion or marketing of the Main Street Area rejuvenation effort to parties that may be involved in the rejuvenation effort and to possible future residents of the Main Street Affordable Housing Project, including (in accordance with affirmative fair housing marketing requirements) the population that is least likely to apply.

(d) The applicant will receive 0 points if the applicant's Master Plan does not includes a discussion of promotion or marketing of the Main Street Area rejuvenation effort.

4. *Rating Factor 4: Appropriateness of the Main Street Affordable Housing Project (up to 20 points).*

a. *Main Street Affordable Housing Project Leverage (up to 10 points).*

(1) In this NOFA, there are three categories of cash and in-kind contributions (''leverage''), Main Street Area Leverage, Main Street Housing Project Leverage, and match:

(a) Main Street Area Leverage includes all types of leverage as described in Section III.C. of this NOFA, entitled, ''Main Street Area Leverage,'' and is used for activities related to the Main Street Area rejuvenation effort. Note that long-term Main Street Area Leverage is rated above in Section V.A.3.b.4. of this NOFA, entitled ''Public and Private Support.''

(b) Main Street Affordable Housing Project Leverage includes all types of leverage as described in Section III.C. of this NOFA, but is specifically used only for development of the Main Street Affordable Housing Project.

(c) Match is a separate, statutorily required sub-group of Main Street Affordable Housing Project Leverage. Match requirements are described in Section III.B. of this NOFA.

(2) This rating factor measures Main Street Affordable Housing Project Leverage only. The amount of Main Street Affordable Housing Project Leverage includes the match amount. Points will be assigned based on the following scale:

Leverage as percent of grant amount	Points awarded (points)
Less than 20 percent	0
Greater than or equal to 20 percent but less than 40 percent	2

Leverage as percent of grant amount	Points awarded (points)
Greater than or equal to 40 percent but less than 60 percent ...	4
Greater than or equal to 60 percent but less than 80 percent ...	6
Greater than or equal to 80 percent but less than 100 percent	8
100 percent or more	10

b. *Retention of historic or traditional architecture (up to 5 points).*

(1) The applicant will receive 5 points if the application demonstrates that the buildings in the project will maintain all of the historic or traditional architecture and design features on all floors of the buildings.

(2) The applicant will receive 2 points if the application demonstrates that the buildings in the project will retain some of the historic or traditional architecture and design features on some or all of the floors of the buildings.

(3) The applicant will receive 0 points if the application does not demonstrate that the buildings in the project will retain historic or traditional architecture and design features.

c. *Reservation for Very Low-Income Families (up to 4 points).*

(1) The applicant will receive 5 points if the number of units reserved for very low-income initial residents is greater than 20 percent of the total affordable housing units in the project.

(2) The applicant will receive 3 points if the number of units reserved for very low-income initial residents is greater than 10 percent, but less than or equal to 20 percent of the total affordable housing units in the project.

(3) The applicant will receive 0 points if the number of units reserved for very low-income initial residents is 10 percent or less of the total affordable housing units in the project.

d. *Energy Star (up to 1 point).*

(1) Promotion of Energy Star compliance is a HOPE VI Main Street program requirement. See Section III.C.4.g. of this NOFA.

(2) You will receive 1 point if your application demonstrates that you will:

(a) Use Energy Star-labeled products;

(b) Promote Energy Star design of affordable units; and

(c) If you elect to include Community and Supportive Services in your grant activities, include Energy Star in homeownership counseling.

(2) You will receive 0 points if your application does not demonstrate that you will perform (a) and (b) above, and, if applicable, (c) above.

5. *Rating Factor 5: Program Administration and Fiscal Management (up to 18 points).*

a. *Program Schedule (up to 5 points).*

(1) The applicant may receive a maximum of 5 points if the program schedule reflects that each of the milestone activities will take place within the stipulated time frames required under Section VI.B.1. of this NOFA and the applicant demonstrates that the planned time frames are realistic and achievable, *i.e.*, there are no known impediments to unit development, *e.g.*, litigation, and the applicant's team has prepared a chart that states estimated production milestones, their relative time frames, and each milestone's time to completion, *e.g.*, Gantt Chart. One point will be deducted from the 5 points for each milestone activity listed in Section VI.B.1. and IV.B.4.c. that is:

(a) Omitted from the program schedule;

(b) Not indicated to occur within the time frame required in this NOFA, or

(c) Is not demonstrated to be realistic and achievable.

b. *Fiscal Management (up to 13 points).*

(1) If the applicant shows fiscal management controls, a procurement system, and a results-oriented management structure that are adequate to manage a grant from this NOFA, and the applicant demonstrates that their management structure and controls are results-oriented, the applicant will receive 13 points;

(2) If the applicant shows fiscal management controls, a procurement system, and management structure and controls that are adequate to manage a grant from this NOFA, but the applicant does not demonstrate that the applicant's management structure and controls are results-oriented, the applicant will receive 8 points;

(3) If the applicant shows fiscal management controls, but the applicant does not demonstrate that the applicant has a procurement system and it does not demonstrate that its management structure and controls are results-oriented, the applicant will receive 4 points;

(4) If the applicant does not describe its program management structure and fiscal management controls and does not show that they are adequate, the applicant will receive 0 points.

6. *Rating Factor 6: Incentive Criteria on Regulatory Barrier Removal—(up to 2 points).*

a. *Description.*

(1) HUD's Notice, ''America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Announcement of Incentive Criteria on Barrier Removal in HUD's FY 2004 Competitive Funding Allocations,'' **Federal Register** Docket Number FR–4882–N–03, published on March 22, 2004, provides that most HUD competitive NOFAs will include an incentive for local and state governments to decrease their regulatory barriers to the development of affordable housing.

(2) Form HUD–27300 contains questions that explore the applicant's efforts to decrease regulatory barriers.

b. *Scoring.*

(1) If the applicant is considered a local unit of government with land use and building regulatory authority, an agency or department of a local unit of government, a nonprofit organization, or other qualified applicant applying for funding for a project located in the jurisdiction of the local unit of government, the applicant is invited to answer the 20 questions in Part A of form HUD–27300. For those applications in which regulatory authority is split between jurisdictions (*e.g.*, county/parish and town), the applicant should answer the question for that jurisdiction that has regulatory authority over the issue at question.

(a) If the applicant checked Column 2 for five to ten questions from Part A, the applicant will receive 1 point in the NOFA evaluation.

(b) If the applicant checked Column 2 for 11 or more questions from Part A , the applicant will receive 2 points in the NOFA evaluation.

(2) Part B of the form is for an applicant that is considered to be a state government or an agency or department of a state government. State governments are not eligible to apply for this NOFA and, as such, Part B of the form is not applicable.

(3) In no case will an applicant receive greater than two points for barrier removal activities. An applicant must submit the documentation requested in the questionnaire or provide a Web site address (URL) where the documentation can be readily found, to receive the bonus points for this policy priority.

7. *Rating Factor 7: RC/EZ/EC–IIs—(up to 2 points).*

a. *RC/EZ/EC–IIs.* This NOFA provides for the award of two bonus points for eligible activities/projects that the applicant proposes to locate in federally designated Empowerment Zones (EZs), Renewal Communities (RCs), or Enterprise Communities, designated by the United States Department of Agriculture in round II (EC–IIs), that are intended to serve the residents of these areas, and that are certified to be consistent with the area's strategic plan or RC Tax Incentive Utilization Plan (TIUP). (For ease of reference in this notice, all of the federally designated areas are collectively referred to as ''RC/EZ/EC–IIs'' and residents of any of these federally designated areas as ''RC/EZ/EC–II residents.'') This NOFA contains a certification, ''Certification of Consistency with RC/EZ/EC Strategic Plan'' (form HUD–2990), that must be completed for the applicant to be considered for RC/EZ/EC–II bonus points. A list of RC/EZ/EC–-IIs can be obtained from HUD's Web page at *http://www.hud.gov/cr.* Applicants can determine if their program/project activities are located in one of these designated areas by using the locator on HUD's Web site at *http://www.hud.gov/crlocator*.

B. Review and Selection Process

1. HUD's selection process is designed to ensure that grants are awarded to eligible local governments with the most meritorious applications.

2. *Application Screening.*

a. HUD will screen each application to determine if:

(1) It meets the threshold criteria listed in Section III.C of this NOFA; and

(2) It is deficient, *i.e.*, contains any technical deficiencies.

b. *Corrections to Deficient Applications.* The subsection entitled, ''Corrections to Deficient Applications,'' in Section V.B of the General Section applies, except that clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 5 calendar days of the date of receipt of the HUD notification, not 14 days.

c. *Applications that will not be rated or ranked.*

(1) HUD will not rate or rank applications that are deficient at the end of a 5 calendar day cure period, as described in Section V.B.2.b. of this NOFA.

(2) HUD will not rate or rank applications that have not met the thresholds described in Section III.C. of this NOFA. Such applications will not be eligible for funding.

3. *Preliminary Rating and Ranking.*

a. *Rating.*

(1) HUD staff will preliminarily rate each eligible application, SOLELY on the basis of the rating factors described in Section V.A of this NOFA.

(2) When rating applications, HUD reviewers will not use any information included in any application submitted for another NOFA.

(3) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(4) The maximum number of points for each application is 102.

(5) *Minimum Score.* Applications that do not have a preliminary score of at least 50 will not be eligible for funding.

b. Ranking.

(1) After preliminary review, applications with a minimum score of 50 or above will be ranked in score order.

4. *Final Panel Review.*

a. A Final Review Panel made up of HUD staff will:

(1) Review the Preliminary Rating and Ranking documentation to:

(a) Ensure that any inconsistencies between preliminary reviewers have been identified and rectified; and

(b) Ensure that the Preliminary Rating and Ranking documentation accurately reflects the contents of the application.

(2) Assign a final score to each application; and

(3) Recommend for selection the most highly rated applications, subject to the amount of available funding, in accordance with the allocation of funds described in Section II of this NOFA.

5. HUD reserves the right to make reductions in funding for any ineligible items included in an applicant's proposed budget.

6. In accordance with the FY 2004 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

7. *Tie Scores.* If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for the Master Plan Qualities Rating Factor. If a tie remains, HUD will select for funding the application(s) with the highest score for the Capacity Rating Factor. HUD will select further tied applications with the highest score for the Need Rating Factor.

8. *Remaining Funds.*

a. HUD reserves the right to reallocate remaining funds from this NOFA to other eligible activities under Section 24 of the Act.

(1) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is less than the amount of funds available from this NOFA, all eligible applications will be funded and those funds in excess of the total requested amount will be considered remaining funds.

(2) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is greater than the amount of funds available from this NOFA, eligible applications will be funded until the amount of non-awarded funds is less than the amount required to feasibly fund the next eligible application. In this case, the funds that have not been awarded will be considered remaining funds.

9. The following sub-sections of Section V. of the General Section are hereby incorporated by reference:

a. HUD's Strategic Goals;

b. Policy Priorities;

c. Threshold Compliance;

d. Corrections to Deficient Applications;

e. Rating; and

f. Ranking.

VI. Award Administration Information

A. Award Notices

1. *Initial Announcement.* The HUD Reform Act prohibits HUD from notifying the applicant as to whether or not the applicant has been selected to receive a grant until HUD has announced all grant recipients. If the application has been found to be ineligible or if it did not receive enough points to be funded, the applicant will not be notified until the successful applicants have been notified. HUD will provide written notification to all applicants, whether or not they have been selected for funding.

2. *Authorizing Document.* The notice of award signed by the Assistant Secretary for Public and Indian Housing (grants officer) is the authorizing document. This notice will be delivered via the United States Postal Service.

3. *Applicant Debriefing.* For a period of at least 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide a debriefing to an application that requests one. All debriefing requests must be made in writing by the authorized official whose signature appears on the SF–424 or his/her successor in office, and submitted to the person or organization identified for ''Technical Assistance'' in Section VII.B. of this NOFA. Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor.

4. *General Section References.* The following sub-sections of Section VI.A. of the General Section are hereby incorporated by reference:

a. Adjustments to Funding.

B. Administrative and National Policy Requirements

1. *Administrative Requirements:*

a. *Grant Agreement Execution.* The grantee must execute the Grant Agreement within 90 days after HUD mails the Grant Agreement to the grantee.

b. *Grant term.* The time period for completion shall not exceed 30 months from the date the NOFA award is executed.

c. *Sub-Grants and Contracts.* Grant funds may be expended directly by the applicant or they may be granted or loaned by the applicant to a third party who is undertaking the development of the project. Loans may be amortized or forgiven.

d. *Reasonable Time Frame.* Grantees must proceed within a reasonable time frame to complete several milestone activities, as indicated below. In determining reasonableness of such time frame, HUD will take into consideration those delays caused by factors beyond the applicant's control. These time frames must be stated in a program schedule, in accordance with the threshold requirement documentation at Section IV.B.4.c. of this NOFA.

e. *Development Proposal.* Grantees must submit a development proposal for the project within 6 months after the grant award date or, if State Historic Preservation Officer approval is necessary, 9 months after the grant award date.

(1) Development proposals must include the following information:

(a) Identification of parties to the project development;

(b) Activities and relationships of parties, *e.g.*, Party A will loan $50,000 to Party C via a hard loan with an interest rate of 6 percent, with a 30-year amortization and a 15-year term.

(c) Financing, *i.e.*, Sources and Uses in the form HUD–52861 format;

(d) Unit description, *i.e.*, unit number and sizes.

(e) Site locations, *i.e.*, lot and block, street address, or legal description;

(f) Development construction cost estimate; and

(g) Certification that open competition will be used by the grantee to select a development partner and/or owner entity, if applicable.

f. *Preliminary Environmental Approval Only.* HUD's notification of award to a selected applicant constitutes a preliminary approval by HUD subject to the completion of an environmental review of the proposed sites in accordance with 24 CFR part 50. See Section III.C.2.k. of this NOFA for information about environmental requirements.

g. *First Construction Start.* Grantees must start housing unit construction within 12 months after the grant award date or, if SHPO approval is necessary, 15 months after grant award date.

h. *Last Construction Completion.* Grantees must complete construction within 30 months from the grant award date.

i. *Flood Insurance.* In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), the application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement.

j. *Coastal Barrier Resources Act.* In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), the application may not target properties in the Coastal Barrier Resources System.

2. *National Policy Requirements.*

a. See references to the General Section in Section III of this NOFA.

3. *Reporting.*

a. *Quarterly Administrative and Compliance Checkpoints Report (Quarterly Report).*

(1) If the applicant is selected for funding, the applicant must submit a Main Street Quarterly Report to HUD. The report will be filled out on-line and will consist of administrative and production milestones, called "Locked Checkpoints," and a short status narrative.

(2) HUD will provide training and technical assistance on the filing and submitting of Main Street Quarterly Reports.

(3) Filing of Quarterly Reports is mandatory for all grantees, and failure to do so within the required quarterly time frame will result in suspension of grant funds until the report is filed and approved by HUD.

(4) Grantees will be held to the milestones that are reported on the Quarterly Report, as approved by HUD.

4. *LOCCS.* Grantees must report all obligations and expenditures in HUD's Line of Credit Control System (LOCCS), or its successor system, on a quarterly basis.

5. *Logic Model Reporting.*

a. The reporting shall include submission of a completed logic model indicating results achieved against the proposed output goal(s) for output and proposed outcome(s) which the applicant stated in the applicant's approved application and agreed upon with HUD. The submission of the logic model and required information should be in accordance with the Program Schedule time frames as identified in the application and Grant Agreement.

6. *Information for Research and Evaluation Studies.* As a condition of the receipt of financial assistance under a HUD Program NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

7. *Final Audit.* Grantees are required to obtain a complete final closeout audit of the grantee financial statements for the grant funds. The audit must be completed by a certified public accountant (CPA) in accordance with generally accepted government audit standards, and a written report of the audit must be forwarded to HUD within 60 days of issuance. Grant recipients must comply with the requirements of 24 CFR part 84 or 24 CFR part 85 as stated in OMB Circulars A–110, A–87, and A–122, as applicable.

8. *Final Report.*

a. The grantees shall submit a final report, which will include a financial report and a narrative evaluating overall performance against its HOPE VI Main Street application and Main Street Quarterly Progress Report. Grantees shall use quantifiable data to measure performance against goals and objectives outlined in its application. The financial report shall contain a summary of all expenditures made from the beginning of the grant agreement to the end of the grant agreement and shall include any unexpended balances.

b. Racial and Ethnic Data. HUD requires that funded recipients collect racial and ethnic beneficiary data. It has adopted the Office of Management and Budget's Standards for the Collection of Racial and Ethnic Data. In view of these requirements, you should use form HUD–27061, Racial and Ethnic Data Reporting Form (instructions for its use), found on *www.HUDclips.org;* a comparable program form; or a comparable electronic data system.

c. The final narrative and financial report shall be due to HUD 90 days after either the full expenditure of funds, or when the grant term expires, whichever comes first.

VII. Agency Contacts

A. Technical Corrections to the NOFA

1. Technical corrections to this NOFA will be posted to the grants.gov Web site.

2. Any technical corrections will also be published in the **Federal Register**.

3. The applicant is responsible for monitoring these sites during the application preparation period.

B. *Technical Assistance.* Before the application submission date, HUD staff will be available to provide the applicant with general guidance and technical assistance on this NOFA. However, HUD staff is not permitted to assist in preparing the application. If the applicant has a question or needs clarification, the applicant may call Lar Gnessin at (202) 708–0614, ext. 2676, send an e-mail to *lawrence_gnessin@hud.gov*, or the applicant may contact Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll-free numbers). Persons with hearing and/or speech impairments may access these telephone numbers via text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339. For technical support for downloading an application or submitting an application, please call grants.gov Customer Support at 800–518–GRANTS (This is a toll-free number).

C. *General Information.* General information about HUD's HOPE VI programs can be found on the Internet at *http://www.hud.gov/offices/pih/programs/ph/hope6/*.

VIII. Other Information

A. *General Section References.* The following sub-sections of Section VIII. of the General Section are hereby incorporated by reference:

1. Executive Order 13132, Federalism;
2. Public Access, Documentation and Disclosure;
3. Section 103 of the HUD Reform Act; and
4. The FY 2005 HUD NOFA Process and Future HUD Funding Processes.

B. *Environmental Impact.* A ''Finding of No Significant Impact'' (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection between 8 a.m. and 5 p.m. in the Office of the General Counsel, Regulations Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

C. *Paperwork Reduction Act Statement.* The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0208. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 68 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, quarterly reports, and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

D. *Sense of Congress.* It is the sense of Congress, as published in Section 410 of the Consolidated Appropriations Act of 2004, that, to the greatest extent practicable, all equipment and products purchased with funds made available in this NOFA should be American-made.

Dated: July 15, 2005.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:		**Organizational Unit:** Department:	
Organizational DUNS:		Division:	
Address: Street:		**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix:	First Name:
City:		Middle Name	
County:		Last Name	
State:	Zip Code	Suffix:	
Country:		Email:	
6. EMPLOYER IDENTIFICATION NUMBER *(EIN):* ☐☐-☐☐☐☐☐☐☐		Phone Number (give area code)	Fax Number (give area code)
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision. If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)		**7. TYPE OF APPLICANT: (**See back of form for Application Types) Other (specify)	
		9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):		**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**	
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*			
13. PROPOSED PROJECT Start Date:	Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
b. Applicant	$ .00	
c. State	$ .00	DATE:
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

HOPE VI Main Street Application Data Sheet

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
Office of Urban Revitalization

OMB Approval No. 2577-0208 (exp. 3/31/2007)

Public Reporting Burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. HUD may not conduct or sponsor, and an applicant is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Response to this collection of information is mandatory to obtain a benefit. The information requested does not lend itself to confidentiality. The information submitted in response to the Notice of Funding Availability for the HOPE VI Main Street Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545), as amended.

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

Instructions: HOPE VI Main Street Application Data Sheet

Tips: Enter information only in cells with blue borders, text or numbers on screen.
All other cells are locked, and all calculations are automated.
Print these Instructions for easy reference, then begin at **Step 1**.

Step 1. On the "Unit Mix" Page, Enter Your Applicant Local Government Name and the Name of the Main Street Area.

Step 2. On the "Unit Mix" Page, Enter the Number of Each Type and Size of the Affordable Units that are Going to be Developed as part of the Main Street Affordable Housing Project Funded through this NOFA.

> Select the appropriate column(s) for the proposed units based on structure type, size and development method.
- Rent-to-Own units are to be counted as Rental Units.
- Possible development methods are Rehabilitation (of housing already owned by the applicant or partner owner entity only) or New Construction (which includes acquisition of housing with or without rehabilitation).

> Enter the number of units proposed, by Structure Type, in the appropriate row based on the Number of Bedrooms.
- TDC limit applies to all Main Street affordable housing project units where HOPE VI Main Street grant funds will be used for development.
- The TDC limit for rehabilitation of existing housing units is 90% of the published TDC limit for a given structure and unit type.
  - The "TDC Limit calculations" worksheet reflects all such applicability as described above.

- Definitions of the structure types specified on the Unit Mix worksheet:
  - Detached: A structure that consists of a single living unit surrounded by permanent open space on all sides.
  - Semi-detached: A structure containing two living units separated by a common vertical wall.
  - Elevator: Any structure of four or more stories above ground in which an elevator is provided.
  - Row House: A structure containing three or more living units separated only by vertical walls.
  - Walk-up: A multi-level low-rise structure containing one or more living units, in which housing units are separated by a ceiling/floor from other housing units or mixed-use

Step 3. On the three "Construction S&U" Pages, Fill in All Proposed Main Street Affordable Housing Project Costs that Will Be Incurred During Construction and All Sources of Funding that Will Be Used During the Construction Period

> Entry areas for costs that are not allowable under the HOPE VI Main Street Program are grayed out.

form HUD-52861 (9/20/2004)

Step 4. At the top of the "Construction S&U p3" page, enter the name of the contact person concering information about the Sources and Uses.

> Also enter the name of the organization that the person is from and the listed contact information.

-If there is a recognized developer, this person probably represents that developer.

Step 5. On the three "Permanent S&U" Pages, Fill in All Proposed Main Street Affordable Housing Project Costs that Will Have Been Incurred by the End of Development and All Sources of Funding that Paid for Those Costs.

> Do not include construction financing that will be paid off when development is finished. Instead, include any permanent loans, grants or equity that are used to pay off the construction financing.

> Entry areas for costs that are not allowable under the HOPE VI Main Street Program are grayed out.

Step 6. On the "Select City and State" Page, Choose the Applicant's City and State

> Click on the down arrow for City

> Click on the name of your city or your Metropolitan/Micropolitan Statistical Area

- You can look up your MSA at OMB's website, http://www.census.gov/population/www/estimates/metrodef.html or call your local HUD office.

> Click "OK"

> Click on the down arrow for State

> Click on the name of your State

> Click "OK"

Step 7. Confirm that Sources are Equal to Uses

> Confirm that the HOPE VI Main Street grant funds and any other sources of Public Housing Capital Assistance funds are included.

> Confirm that sources of HOPE VI/Public Housing funds are equal to uses of HOPE VI/Public Housing funds.

Step 8. Enter any Extraordinary Site Cost (a component of Additional Project Costs -- not subject to TDC limit)

> Enter any Extraordinary Site Cost in the cell provided. This may be some or all of the funds entered in BLI 1450.

- Extraordinary Site Costs must be verified by an independent registered engineer, and must be approved by HUD in accordance with 24 CFR 941.103.

Step 9. Review TDC Limit Calculation Results (note that HCC does not apply to the HOPE VI Main Street program)

> Review the results of the TDC limit calculations.

- The TDC limit analysis results are shown on the lower left "TDC Limit calculations" worksheet.

Step 10. Enter All Leverage Resources

> The total value of the Match must be greater than 5 percent of the requested grant amount.

> The total value of Main Street Affordable Housing Project leverage is measured in a Rating Factor.

> The total value of all leverage resources must equal or be greater than the requested grant amount.

Step 11. Save and Submit this Form With Your Application

> To save this form so that it cannot be changed without your permission:

- Click on the button to the right;
- Choose and enter a password in the space provided;
- Click "OK";
- Re-enter the password to verify;
- Click "OK";
- Click "Save";
- If prompted, click "Yes" to replace the existing form with the form you just finished filling out.

> To submit this form as part of your application, follow the instructions in Section IV.F. of the HOPE VI Main Street NOFA.:

form **HUD-52861** (9/20/2004)

Unit Mix and Accessibility Summary, Post-Revitalization

Step 2. Enter the Local Government Name, the Main Street Area Name

Applicant (Local Govt.) Name: ____________________

Main Street Area Name: ____________________

Step 3. Enter the Number of Units of Each Type and Size that are to be Developed in the Main Street Affordable Housing Project Funded Through this NOFA.

		Rental Units		Homeownership Units	
Structure Type	**Number of Bedrooms**	**Rehabilitation** of Existing Applicant / Partnership Owned Housing	**New Construction or Acquisition** (with or without Rehabilitation)	**Rehabilitation** of Existing Applicant / Partnership Owned Housing	**New Construction or Acquisition** (with or without Rehabilitation)
Detached and Semi-Detached	0	-	-	-	-
	1	-	-	-	-
	2	-	-	-	-
	3	-	-	-	-
	4	-	-	-	-
Row House	0	-	-	-	-
	1	-	-	-	-
	2	-	-	-	-
	3	-	-	-	-
	4	-	-	-	-
Walk-Up	0	-	-	-	-
	1	-	-	-	-
	2	-	-	-	-
	3	-	-	-	-
	4	-	-	-	-
Elevator	0	-	-	-	-
	1	-	-	-	-
	2	-	-	-	-
	3	-	-	-	-
	4	-	-	-	-
	Totals:	-	-	-	-

Construction Sources and Uses
For the HOPE VI Main Street Affordable Housing Project

Local Government:
Main Street Area:

Uses ($)*	HOPE VI Main Street	Other Govt	Tax Credit Equity	Other Private Sector	Total
Administration					
Administration					$ -
Management Improvements					
Management Improvements - Dev					$ -
Management Improvements - CSS					$ -
Acquisition					
Site Acquisition					$ -
Building Acquisition					$ -
Building Acquisition, Non-Dwelling					$ -
Building Remediation/Demolition					
Remediation, Dwelling Units/Site					$ -
Demolition, Interior					$ -
Remediation, Non-Dwelling Units					$ -
Demolition, Non-Dwelling Units					$ -
Demolition, Other					$ -
Site Improvements					
Site Remediation					$ -
Site Infrastructure (Utilities & Roads)					$ -
Site Improvements (Other)					$ -
Construction					
Dwelling Structures - Hard Costs					$ -
Non-Dwelling - Hard Costs					$ -
General Requirements					$ -
Builder's Profit					$ -
Builder's Overhead					$ -
Bond Premium					$ -
Hard Cost Contingency					$ -
Equipment					
Dwelling Equipment					$ -
Non-Dwelling Equipment					$ -
Professional Fees/Consultant Services					
Program Management Services					$ -
Architectural					$ -
Engineering					$ -
Construction Management Services					$ -
Appraisal					$ -
Environmental					$ -
Market Study					$ -
Historic Preservation Documentation					$ -
Other					$ -
Legal					
Organizational					$ -
Syndication					$ -
Main Street Outside Counsel					$ -
Other					$ -
Tax Credits					
Accounting					$ -
Tax Credit Application					$ -
Tax Credit Monitoring Fee					$ -
Syndication					$ -
Other					$ -
Page 1 Total	$ -	$ -	$ -	$ -	$ -

 form **HUD-52861** (9/20/2004)

Construction Sources and Uses
For the HOPE VI Main Street Affordable Housing Project

Local Government:

Main Street Area:

Uses ($)*	HOPE VI Main Street	Other Govt	Tax Credit Equity	Other Private Sector	Total
Other Development Costs (Soft Costs)					
Accounting Fees					$ -
Financing Fees					$ -
Permit Fees					$ -
Title/Recording/Settlement Fees					$ -
Real Estate Taxes During Construction					$ -
Insurance During Construction					$ -
Interest During Construction					$ -
Bridge Loan Interest					$ -
Marking/Rent-up Expenses					$ -
Reserves					$ -
Soft Cost Contingency					$ -
Other					$ -
Relocation					
Relocation Costs					$ -
Developer Fee					
Developer Fee					$ -
Reserves					
Operating Reserve					$ -
Other Reserves					$ -
Page 2 Total	$ -	$ -	$ -	$ -	$ -
GRAND TOTAL USES:	$ -	$ -	$ -	$ -	$ -

Construction Sources and Uses
For the HOPE VI Main Street Affordable Housing Project

Local Government:

Main Street Area:

Name of Person that Completed S&U:	
Organization Name :	
Email:	
Phone:	

Sources ($)	HOPE VI Main Street	Other Govt	Tax Credit Equity	Other Private Sector	Total
Public Housing Funds					
HOPE VI Main Street					$ -
Public Housing					$ -
Sub-Total	$ -	$ -	$ -	$ -	$ -
Other HUD Funds					
HOME					$ -
CDBG					$ -
Other Funds					$ -
Sub-Total	$ -	$ -	$ -	$ -	$ -
Total HUD Funds	$ -	$ -	$ -	$ -	$ -
Non-HUD Public Funds					
State Funds					$ -
Local Funds					$ -
Other Funds					$ -
Other Funds					$ -
Other Funds					$ -
Sub-Total	$ -	$ -	$ -	$ -	$ -
Total Public Funds	$ -	$ -	$ -	$ -	$ -
Private Funds					
Tax Exempt Bonds					$ -
Taxable Bonds					$ -
Private LIHTC					$ -
Other Equity					$ -
Homebuyer Down Payment					$ -
Donations/Grants					$ -
Private Lender					$ -
Other					$ -
Other:					$ -
Other					$ -
Other:					$ -
Total Private Funds	$ -	$ -	$ -	$ -	$ -
Total Sources	$ -	$ -	$ -	$ -	$ -

Permanent Sources and Uses
For the HOPE VI Main Street Affordable Housing Project
Local Government:
Main Street Area:

Uses ($)*	HOPE VI Main Street	Other Govt	Tax Credit Equity	Other Private Sector	Total
Administration					
Administration					$ -
Management Improvements					
Management Improvements - Dev					$ -
Management Improvements - CSS					$ -
Acquisition					
Site Acquisition					$ -
Building Acquisition					$ -
Building Acquisition, Non-Dwelling					$ -
Building Remediation/Demolition					
Remediation, Dwelling Units/Site					$ -
Demolition, Interior					$ -
Remediation, Non-Dwelling Units					$ -
Demolition, Non-Dwelling Units					$ -
Demolition, Other					$ -
Site Improvements					
Site Remediation					$ -
Site Infrastructure (Utilities & Roads)					$ -
Site Improvements (Other)					$ -
Construction					
Dwelling Structures - Hard Costs					$ -
Non-Dwelling - Hard Costs					$ -
General Requirements					$ -
Builder's Profit					$ -
Builder's Overhead					$ -
Bond Premium					$ -
Hard Cost Contingency					$ -
Equipment					
Dwelling Equipment					$ -
Non-Dwelling Equipment					$ -
Professional Fees/Consultant Services					
Program Management Services					$ -
Architectural					$ -
Engineering					$ -
Construction Management Services					$ -
Appraisal					$ -
Environmental					$ -
Market Study					$ -
Historic Preservation Documentation					$ -
Other					$ -
Legal					
Organizational					$ -
Syndication					$ -
Main Street Outside Counsel					$ -
Other					$ -
Tax Credits					
Accounting					$ -
Tax Credit Application					$ -
Tax Credit Monitoring Fee					$ -
Syndication					$ -
Other					$ -
Page 1 Total	$ -	$ -	$ -	$ -	$ -

Construction Sources and Uses
For the HOPE VI Main Street Affordable Housing Project

Local Government:

Main Street Area:

Uses ($)*	HOPE VI Main Street	Other Govt	Tax Credit Equity	Other Private Sector	Total
Other Development Costs (Soft Costs)					
Accounting Fees					$ -
Financing Fees					$ -
Permit Fees					$ -
Title/Recording/Settlement Fees					$ -
Real Estate Taxes During Construction					$ -
Insurance During Construction					$ -
Interest During Construction					$ -
Bridge Loan Interest					$ -
Marking/Rent-up Expenses					$ -
Reserves					$ -
Soft Cost Contingency					$ -
Other					$ -
Relocation					
Relocation Costs					$ -
Developer Fee					
Developer Fee					$ -
Reserves					
Operating Reserve					$ -
Other Reserves					$ -
Page 2 Total	$ -	$ -	$ -	$ -	$ -
GRAND TOTAL USES:	$ -	$ -	$ -	$ -	$ -

Construction Sources and Uses
For the HOPE VI Main Street Affordable Housing Project

Local Government:

Main Street Area:

Name of Person that Completed S&U:

Organization Name:

Email:

Phone:

Sources ($)	HOPE VI Main Street	Other Govt	Tax Credit Equity	Other Private Sector	Total
Public Housing Funds					
HOPE VI Main Street					$ -
Public Housing					$ -
Sub-Total	$ -	$ -	$ -	$ -	$ -
Other HUD Funds					
HOME					$ -
CDBG					$ -
Other Funds					$ -
Sub-Total	$ -	$ -	$ -	$ -	$ -
Total HUD Funds	$ -	$ -	$ -	$ -	$ -
Non-HUD Public Funds					
State Funds					$ -
Local Funds					$ -
Other Funds					$ -
Other Funds					$ -
Other Funds					$ -
Sub-Total	$ -	$ -	$ -	$ -	$ -
Total Public Funds	$ -	$ -	$ -	$ -	$ -
Private Funds					
Tax Exempt Bonds					$ -
Taxable Bonds					$ -
Private LIHTC					$ -
Other Equity					$ -
Homebuyer Down Payment					$ -
Donations/Grants					$ -
Private Lender					$ -
Other					$ -
Other:					$ -
Other					$ -
Other:					$ -
Total Private Funds	$ -	$ -	$ -	$ -	$ -
Total Sources	$ -	$ -	$ -	$ -	$ -

 form **HUD-52861** (9/20/2004)

Using the Drop-down Lists Provided, Select the City (or Region) and State in which the Project is Located

City	(All)	**<-- Select City, PMSA/MSA, County or Parish from list here**
StateName	(All)	**<-- Select State from list here**

Type	Data	Total
Detached/Semi-Detached	0 Bedrooms TDC	36,069,471
	1 Bedrooms TDC	47,645,617
	2 Bedrooms TDC	62,182,902
	3 Bedrooms TDC	75,018,658
	4 BedroomsTDC	88,640,855
	5 Bedrooms TDC	97,131,096
	6 Bedrooms TDC	105,269,890
	0 Bedrooms HCC	20,611,126
	1 Bedrooms HCC	27,226,067
	2 Bedrooms HCC	35,533,087
	3 Bedrooms HCC	42,867,805
	4 Bedrooms HCC	50,651,917
	5 Bedrooms HCC	55,503,483
	6 Bedrooms HCC	60,154,223
Elevator	0 Bedrooms TDC	27,102,156
	1 Bedrooms TDC	37,943,019
	2 Bedrooms TDC	48,783,882
	3 Bedrooms TDC	65,045,175
	4 BedroomsTDC	81,306,469
	5 Bedrooms TDC	92,147,332
	6 Bedrooms TDC	102,988,194
	0 Bedrooms HCC	16,938,848
	1 Bedrooms HCC	23,714,387
	2 Bedrooms HCC	30,489,926
	3 Bedrooms HCC	40,653,235
	4 Bedrooms HCC	50,816,543
	5 Bedrooms HCC	57,592,082
	6 Bedrooms HCC	64,367,622
Row House	0 Bedrooms TDC	32,266,407
	1 Bedrooms TDC	42,377,194
	2 Bedrooms TDC	54,964,417
	3 Bedrooms TDC	66,130,920
	4 BedroomsTDC	77,849,269
	5 Bedrooms TDC	85,295,434
	6 Bedrooms TDC	92,152,163
	0 Bedrooms HCC	18,437,947
	1 Bedrooms HCC	24,215,539
	2 Bedrooms HCC	31,408,239
	3 Bedrooms HCC	37,789,097
	4 Bedrooms HCC	44,485,296
	5 Bedrooms HCC	48,740,248
	6 Bedrooms HCC	52,658,379
Walkup	0 Bedrooms TDC	27,349,151
	1 Bedrooms TDC	36,713,564
	2 Bedrooms TDC	46,713,996
	3 Bedrooms TDC	62,041,836
	4 BedroomsTDC	76,791,383
	5 Bedrooms TDC	86,599,050
	6 Bedrooms TDC	95,837,120
	0 Bedrooms HCC	15,628,086
	1 Bedrooms HCC	20,979,180
	2 Bedrooms HCC	26,693,712
	3 Bedrooms HCC	35,452,478
	4 Bedrooms HCC	43,880,790
	5 Bedrooms HCC	49,485,172
	6 Bedrooms HCC	54,764,069

Total Development Cost (TDC) Limit Calculations

(NOTE: Housing Cost Cap does not apply to the HOPE VI Main Street program)

Applicant Name:

Main Street Area Name:

Using TDC Limits published in Notice PIH 2003-8 (extended as PIH 2004-6) for: (All), (All)

Step 3. Unit Mix (Note: enter this information on the "Unit Mix" worksheet)				TDC Limits	
Structure Type	**BRs**	**Rehab of Owned Housing**	**New Const.**	**Per Unit**	**Total for All Units**
Detached/Semi-Detached	0	-	-	$ 36,069,471	$ -
	1	-	-	$ 47,645,617	$ -
	2	-	-	$ 62,182,902	$ -
	3	-	-	$ 75,018,658	$ -
	4	-	-	$ 88,640,855	$ -
Row House	0	-	-	$ 97,131,096	$ -
	1	-	-	$ 105,269,890	$ -
	2	-	-	$ 20,611,126	$ -
	3	-	-	$ 27,226,067	$ -
	4	-	-	$ 35,533,087	$ -
Walkup	0	-	-	$ 42,867,805	$ -
	1	-	-	$ 50,651,917	$ -
	2	-	-	$ 55,503,483	$ -
	3	-	-	$ 60,154,223	$ -
	4	-	-	$ 27,102,156	$ -
Elevator	0	-	-	$ 37,943,019	$ -
	1	-	-	$ 48,783,882	$ -
	2	-	-	$ 65,045,175	$ -
	3	-	-	$ 81,306,469	$ -
	4	-	-	$ 92,147,332	$ -
		-	-		$ - TDC Limit

Total Public Housing Sources, Including Requested HOPE VI Main Street Grant and All Other Public Housing Sources (from the Permanent Sources and Uses Pages)	$ -	$ -
Total Uses, All Uses of the HOPE VI Main Street Grant Funds (from the Permanent Sources and Uses pages)		
1408 Community and Supportive Services ("CSS")	$ -	Not in TDC
1408 Management Improvements	$ -	
1430 Fees and Costs (planning, program mgmt, insurance, Reserves, etc.)	$ -	
1440 Site Acquisition (cost of acquiring sites **without** structures to be retained as housing)	$ -	
1450 Site Improvement (streets, site improvements and public improvements)	$ -	
1460 Dwelling Structures, **New Construction and Rehab of Acquisitions**	$ -	
1465 Dwelling Equipment	$ -	
1485 Demolition (including associated environmental remediation costs)	$ -	
1495 Relocation (moving expenses, and direct Local Government cost of full-time relocation staff)	$ -	
Total HOPE VI Main Street Uses		$ -

Total PH Sources must equal Total PH Uses.

Community & Supportive Services ("CSS")	$ -	
(Minus) CSS (Not subject to TDC limit)		$ -
Total Uses of Public Housing Capital Assistance Subject to TDC Limit		$ -

TDC Calculation Results

HOPE VI Main Street TDC Limit Analysis:

Total Development Cost as Percentage of TDC Limit.
If TDC is greater than 100%, the Project violates TDC limit(s) for this NOFA.

#DIV/0!

List all funds and in-kind services that you are including as Match, leverage that has been or will be used to develop the Main Street Affordable Housing Project. By signing the form SF-424, you are certifying that each of the listed resources for Match and leverage has been, or will be, firmly commited to use on your Main Street Affordable Housing Project By signing the form SF-424, you are also certifying that each of the listed resources for leverage has been, or will be, firmly commited to use on your Main Street Affordable Housing Project. The amounts listed on these two lists must be consistent with the amounts listed on the Sources & Uses portions of this form.

Match Resources

	Source of Leverage	Resource Contact	Resource Phone	Dollar Value	Cash or In-Kind Svc.	Leverage Period 2 Years or More? (Y/N)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
				$ -		

Main Street Affordable Housing Project Leverage Resources

	Source of Leverage	Resource Contact	Resource Phone	Dollar Value	Cash or In-Kind Svc.	Leverage Period 2 Years or More? (Y/N)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
				$ -		

form HUD-52861 (09/20/2004)

List all funds and in-kind services that you are including as resources that have been, or will be, applied to your Main Street Area rejuvenation effort, other than those listed for application to Match or the development of your Main Street Affordable Housing Project. By signing the form SF-424, you are certifying that each of the listed resources for as applying to your Main Street Area rejuvenation effort have been, or will be, firmly commited to use on your Main Street Area rejuvenation effort.

Main Street Area Rejuvenation Effort Leverage Resources

	Source of Leverage	Resource Contact	Resource Phone	Dollar Value	Cash or In-Kind Svc.	Leverage Period More than 2 Years (Y/N)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29						
30						
				$ -		

form HUD-52861 (09/20/2004)

HOPE VI BUDGET GUIDANCE

I. GENERAL BUDGET GUIDANCE

A. Introduction

This document provides detailed information for HOPE VI Grantees to use when developing and revising their program budgets. All guidance is applicable to Revitalization, Demolition, Neighborhood Networks and Main Street HOPE VI grants unless specific other instructions are provided. Included are examples of costs and where they should be placed in the budget; however, none of the lists of activities are meant to be exclusive. Also, some of the examples may be allowable only under the Revitalization grant and not under Demolition, Neighborhood Networks, or Main Street grants. If a particular activity cost is not listed, if an expense is unclear, or the there is a question as to whether the activity cost is allowable for a specific type of grant, Grantees should request assistance from their HOPE VI Grant Manager.

B. HOPE VI Budget Form

HOPE VI program budgets are submitted on Form HUD-52825-A, Parts I and II. The blank form, and an Excel workbook that will assist in filling out the form, can be obtained over the Internet from HUDClips at http://www.hudclips.org/cgi/index_cliphome.com

The HOPE VI grant amount is divided into Budget Line Items (BLIs), as provided on Part I of the Budget Form. On Part II, those BLIs are broken down into specific costs or work items, in accordance with these guidelines and the Chart of Accounts, as detailed below.

C. HOPE VI Program Area

The original name of the HOPE VI Program, as created in FY 1993, was the Urban Revitalization Demonstration, aka URD. Grantees will find the initials URD in their HOPE VI grant numbers. However, the Program Area in LOCCS is URP, for Urban Revitalization Program.

D. Chart of Accounts

This Budget Guidance supplements the HOPE VI Budget Guidance chapter in the HOPE VI Guidebook, dated October 2000, and the Public and Indian Housing Low-Rent Technical Accounting Guide, HUD Guidebook Number 7510.1, issued on May 7, 1996. Where this guidance is inconsistent with the Accounting Guide, use the HOPE VI guidance when preparing your budget. The Accounting Guide explains financial management standards, identifies the types of financial information Grantees must maintain, and provides a **Chart of**

Accounts that describes the eligible expenses for each BLI. Pages IV-28 through IV-50 of the Accounting Guide are posted to the HOPE VI Website for the convenience of Grantees. Each grantee is encouraged to obtain a copy of the Accounting Guide, as it provides assistance in preparing all HUD public housing program budgets.

E. Community and Supportive Services (CSS) in HOPE VI Revitalization Grants

Although funds budgeted and expended under most BLIs may be moved to another BLI as the need arises, CSS funds may only be used for CSS purposes. In order to differentiate between capital cost, including PHA administration, and CSS budgeting and expenditures, all CSS services budget information should be included in BLI 1408, Management Improvements. Physical improvement costs necessary to provide facilities primarily intended for the delivery of CSS programs and economic development opportunities for residents of the targeted development are NOT included in the CSS cost cap and not included in BLI 1408. CSS cost limits are:

1. FY 1993 - 1996 Grantees may use not more than 20 percent of their grant for CSS programs and related administrative expenses.

2. FY 1997 Grantees are limited to no more than $5,000 per unit for CSS programs and related administrative expenses, based on the higher of:

   a. the number of currently occupied units in the project to be revitalized, or

   b. the number of Replacement Units after revitalization, as defined in Section II.K.3 of the FY 1997 NOFA.

3. FY 1998 Grantees are limited to no more than $5,000 per unit for CSS programs, based on:

   a. the number of households in occupied units in the project to be revitalized at the time of application submission, and

   b. the estimated number of new households that are expected to occupy replacement units after revitalization.

   c. For Elderly grants, $5,000 per household for human services programs to address quality of life and other social needs, particularly as related to aging in place and assisted living.

4. FY 1999 to the present Grantees may budget up to 15 percent of the total HOPE VI grant amount to pay the costs of CSS programs.

This means that CSS costs must be allocated between two Budget Line Items on the budget form, as follows:

Budget Line Item		
1408	Management Improvements/ Community and Supportive Services	All "soft" CSS costs, regardless of whether activities will be carried out by Grantee staff or by a partner or contractor. All costs related to Management Improvements
1470	Non-Dwelling Structures	Construction or rehabilitation of structures to be used for CSS programs

II. STEPS IN THE BUDGET PROCESS

A. Revitalization Budget

Each selected Revitalization application included a budget, submitted on Form HUD-52825-A, for the full amount requested. To reflect changes resulting from TDC calculations, grant reductions, and other changes in the project during post-award review, each Grantee must provide a revised budget in its Supplemental Submissions.

B. Demolition Budget

Demolition Grantees are sent approved budgets when they are first notified of selection. In most cases, all grant funds are made available to the Grantee as soon as the Grant Agreement is executed. Exceptions include:

1. If the application was funded for an amount less than the amount requested, the budget may indicate the HUD-approved total amount only. The Grantee must submit a revised budget to its Field Office reflecting the revised amount.

2. If an application was approved based on a Section 202 Conversion Plan that was submitted to HUD but not yet approved, funds will not be made available to the Grantee until the Conversion Plan is approved.

C. Main Street Budget

Each selected Main Street application included a budget, submitted on Form HUD-52825-A, for the full amount requested. To reflect changes resulting from TDC calculations, grant reductions, and other changes in the project during post-award review, each Grantee must provide a revised budget when it submits its signed Grant Agreement, shortly after award.

1. The Grantee should use the HOPE VI Budget Revision Workbook version of the form HUD-52825-A, which can be obtained from HUDClips at http://www.hudclips.org/sub_nonhud/html/forms.htm.

D. Neighborhood Networks and CSS

The Neighborhood Networks grants do not include a CSS cap. The amount spent on CSS related services and hardware the other BLIs is determined by the Grantee, with HUD's Budget approval.

E. BLI 2000 and Requests for Funds

Although each HOPE VI Revitalization grant has a budget that shows the entire amount of the grant by BLI, those individual amounts are not automatically made available to the Grantee. Instead, when a HOPE VI Grant Agreement is first executed, the entire amount of the grant is placed into BLI 2000, which is a special "holding" account where funds remain unavailable to the Grantee until HUD authorizes their expenditure and distributes, or "spreads", them into the applicable BLIs. Grant funds are placed into BLI 2000 so that HUD can control the amount of funds that Grantees have access to and to ensure that major expenditures have been approved before they are disbursed.

BLI 2000 is rarely used for Demolition grants, but HUD may place grant funds into BLI 2000 to restrict drawdowns pending resolution of particular issues.

F. Predevelopment Budget

By definition, Predevelopment costs are incurred by the Grantee before the first phase's financial closing. Once this closing occurs, development has started. For this reason, Predevelopment Budgets apply only to Revitalization grants. There are no pre-development budgets.

The Revitalization Grant Agreement provides that a Grantee may submit a predevelopment budget to request grant funds for specific eligible predevelopment costs before the grantee has completed its first phase financial closing. The predevelopment budget, also submitted on Form HUD-52825-A and clearly marked as a Predevelopment Budget, will include the Grantees request to HUD to spread ONLY the predevelopment costs requested, not the total amount of the grant. The eligible predevelopment costs are listed in the Grant Agreement. HUD will generally approve predevelopment budgets that request funds for expenses anticipated over the next six months.

In accordance with the Grant Agreement, predevelopment funds may be requested for costs incurred after the notification of grant award and before Grant Agreement execution. Changes or corrections may be negotiated between the Grantee and HUD. The CEO of the Grantee must sign and date the predevelopment budget. When approvable, HUD will sign the approved predevelopment budget and return a copy to the Grantee. HUD will spread the amounts on the predevelopment budget into the appropriate BLIs from BLI 2000, thus making them available for the Grantee to draw down. No further HUD approval will be required unless a particular drawdown triggers an edit (see Grantee Financial Instructions) or the grant is put on manual review.

G. Neighborhood Networks and Main Street Allowable Expenditures from Award Notice

In accordance with the Grant Agreement, predevelopment funds may be requested for costs incurred after the notification of grant award and before Grant Agreement execution. The grant award date is stated in HUD's notification to the Grantee that it has received an award. The date is also stated in the Grant Agreement. Although allowable expenses may be charged to the grant from the date of award, HUD will not spread funds until after the Grant Agreement is fully executed. After Grant Agreement execution, the Grantee may submit a detailed budget on the HOPE VI Budget form (HUD-52825A) asking HUD to spread the total amount of the grant funds.

H. Revitalization Grant Mixed-Finance Release of Funds

Grant funds needed for a project or phase of a project are detailed in Exhibit F of the ACC Amendment for that project or phase. When the proposal is approved and the ACC Amendment is executed at the time of phase closing, HUD will spread the funds detailed in Exhibit F into LOCCS and make them available to the Grantee for the activities specified in the approved proposal. This process is repeated for each phase of the project. Grantees may submit interim spread requests at times other than phase closing for costs that are not directly associated with phase development, e.g., Administration, Demolition, Relocation, etc.

I. Budget and Grant Term

Costs may be included in the HOPE VI Budget for the active period of the grant only. That is, if it will take two years for the Grantee to accomplish its proposed demolition, rehabilitation/new construction, and full lease-up, funds may be budgeted to provide staff salaries, supportive services, etc. for only a two year period, even if the term of the grant as stated in the Grant Agreement is for longer than that amount of time. This is consistent with the general rule that any funds drawn from the Federal Treasury must be disbursed by the Grantee to the payee within three working days.

The only exception is in the case of a CSS Endowment Trust. Section 24 of the U.S. Housing Act authorized Grantees awarded Revitalization grants in FY 2000 and beyond to use CSS funds to set up Endowment Trust funds. The Trust is a mechanism that allows Grantees to use HOPE VI funds for CSS activities after the physical development stage is completed. Details of the Trust are included in the Grant Agreement.

Grant funds that are in reserve accounts that are allowable under the grant are considered expended when they are deposited into the reserve account.

III. SPECIFIC BUDGET LINE ITEM GUIDANCE

BLI 1408 - MANAGEMENT IMPROVEMENTS / COMMUNITY AND SUPPORTIVE SERVICES

Costs applicable to BLI 1408 are those related to management improvement activities and community and supportive services programs. Although this section discusses costs for management improvements and CSS programs separately, both types of costs must be included in 1408. Please note that a hard edit has been placed on BLI 1408 in LOCCS. This means that Grantees may only request funds up to 100 percent of the amount entered in LOCCS for BLI 1408 instead of the 110 percent established for other BLIs.

A. Management Improvements

Management improvements are the costs of improvements to PHA management systems that are made in conjunction with HOPE VI grant-related revitalization efforts. All management improvements costs must be placed in the "Capital Costs" column. Note that regardless of whether costs for management improvements are to be incurred by PHA staff or contractors, all such costs must be included in BLI 1408. On Part II of the budget form, differentiate between those costs incurred by the PHA and those by contractors.

Specific Eligible Management Improvements Costs

- PHA staff training (including travel) related to management improvements
- PHA staff time, contractors, and materials used to revise:
- procedures manuals
- accounting systems (including project-based budgeting)
- occupancy policy (including establishment of community based waiting list)
- administrative plan
- lease documents
- maintenance policy and procedures
- resident screening procedures
- PHA staff time and materials used to develop performance measures to monitor success of management improvements

- development or purchase of ADP/computer systems

Resident Management:

- technical assistance to a resident council or resident management corporation (RMC)
- feasibility study of resident management
- resident management training of RMC members
- establishment of a community management association to manage common area, provide policy direction, oversee property management
- resident training on: (may include an amount for travel)

  housing management
  maintenance
  Section 3 compliance

Heightened Security Costs:

- security guards
- tenant patrols
- resident security training

B. Community and Supportive Services Programs / Neighborhood Networks

All "soft" costs for CSS programs, regardless of whether activities will be carried out by Grantee staff or by a partner or contractor, must be placed under BLI 1408.

All staff costs for Neighborhood Networks grants, regardless of whether activities will be carried out by Grantee staff or by a partner or contractor, must also be placed under BLI 1408.

On Part II of the budget, differentiate between costs that will be incurred by PHA staff and costs incurred by contractors.

Specific Eligible CSS Program Costs

- PHA staff training (including travel) related to CSS programs
- PHA staff time and materials used to develop performance measures to monitor success of CSS programs.
- cost of a contractor to facilitate the organization of a community task force that performs needs assessment and other planning of the CSS program.
- transportation: bus fare, leasing or purchase of vehicles for supportive services, salaries of drivers, gas and maintenance
- counseling: family, substance abuse, homeownership, etc.
- resident employment and stipends
- latchkey, daycare
- employment training
- senior citizens services
- needs assessment
- computer training
- computers for computer lab, lending library, or rental units
- upgrade personal computers in local schools
- case management
- health care
- maintenance equipment associated with management improvements
- signeage
- tables, chairs, easels, portable blackboards, coffee pots, etc. for

community and resident meeting rooms; including light refreshments served at meetings

- recreation programs, including playground equipment, sports equipment, uniforms

Economic Development Costs:

- revolving loan fund. HOPE VI funds may not be deposited into an interest-bearing account to establish a revolving loan fund. However, program income and the interest it collects can be used to establish either a revolving loan fund or endowment fund.
- establishment of credit union
- contract with community development bank to manage special financial and economic development services
- establishment of a component of a local CDC to provide leadership in community organizing
- planning for development of small business on site, including resident-owned enterprises
- wage subsidies for retail employment

Supportive Services Endowment Funds:

In accordance with Section 24(d)(2) of the Housing Act of 1937, FY 2000 and beyond Grantees only may deposit up to 15 percent of the HOPE VI grant amount (the maximum amount of the grant allowable for CSS programs) in an endowment trust to provide community and supportive services over such period of time as the Grantee determines. The amount requested will be provided by HUD in a lump sum. Funds must be invested in a wise and prudent manner, i.e., funds may be invested in deposits, certificates of deposit, and other types of securities that are deposited in an account insured by the United States of America. Endowment funds (together with any interest earned) may only be used for eligible and necessary CSS program costs. Endowment funds may be used in conjunction with other amounts donated or otherwise made available to the fund for similar purposes.

Specific Eligible Neighborhood Networks Program Costs

- PHA staff training (including travel) related to Neighborhood Networks programs
- PHA staff time and materials used to develop performance measures to monitor success of Neighborhood Networks programs.
- cost of a contractor to facilitate the organization and implementation of a Neighborhood Networks Center, e.g., NNC Coordinator
- counseling: family, substance abuse, homeownership, etc.

- resident employment and stipends related to Neighborhood Networks
- computer training

Note that for Neighborhood Networks grants, several items listed above, under Specific Eligible CSS Program Costs, are not counted in BLI 1408. Those items, along with all other non-CSS costs, are counted in other BLIs, as described below.

BLI 1410 - ADMINISTRATION

BLI 1410 is intended for costs associated with the general, overall administration of the HOPE VI grant by the Grantee. Any administrative expenses on the part of the Grantee that are charged to the HOPE VI budget must be prorated in accordance with the time spent on HOPE VI grant-related activities. The Grantee must itemize its personnel that will be working on the project, the percentage of time for each person, and the amount of salary billed to HOPE VI. This proration should be consistent with the Staffing and Time Allocation information submitted by the Grantee and approved by HUD.

A hard edit has been placed on BLI 1410 in LOCCS. This means that Grantees may only request funds up to 100 percent of the amount entered in LOCCS for BLI 1410, instead of the 110 percent established for other BLIs.

Note that all costs related to management improvements or CSS programs, and staff costs related to Neighborhood Networks, must be included in BLI 1408 (Management Improvements), and NOT under 1410.

Specific Eligible Costs

- staff salaries and benefits, including resident employment, not directly related to CSS or Neighborhood Networks programs
- staff attorney (not including fees and expenses directly related to site acquisition)
- staff training, related travel, not related to CSS or Neighborhood Networks
- copies
- postage
- telephone
- expendable equipment
- operation of motor vehicle
- advertisements to support solicitations for bids
- marketing and advertising of new units
- publications
- office space
- utilities for office
- rental of office equipment
- janitorial supplies
- accounting and auditing expenses not already paid by the PHA
- PHA's insurance: workman's comp, vehicle, fire, fidelity bonds, public liability

BLI 1430 - FEES AND COSTS

Fees and Costs generally are expenditures made to entities that are contracted by the Grantee to perform specific services. They do not include the salaries of employees of the Grantee. Exceptions to this rule are as follows:

- CSS, Neighborhood Networks staffing, and management improvement costs must be charged to BLI 1408, regardless of whether those activities will be carried out by Grantee staff or contractors.
- Fees and costs associated with acquisition of real estate should be charged to BLI 1440 (Site Acquisition), including appraisals, broker fees, closing costs, recording fees, surveys, etc.
- A&E or other fees and costs associated with hazard abatement/remediation and demolition must be charged to BLI 1485.
- Relocation contractors must be charged to BLI 1495.

On Part II of the Budget form, Fees and Costs must be described in adequate detail to determine costs for associated BLIs. For example, if a Grantee is using HOPE VI funds to build a self-sufficiency or Neighborhood Networks service center, the costs to physically build the center belong in BLI 1470 (Non-Dwelling space) and the soft costs, such as A&E, belong in BLI 1430. Part II of the budget must be itemized in enough detail to determine the entire cost of the activity, including both the hard and soft costs.

Specific Eligible Costs

- consultant fees:

  program management: Note that if the Grantee is relying on a Program Manager, the HUD Grant Manager will be closely reviewing costs under Administration (BLI 1410)
  environmental
  marketing
  financial
  legal - negotiate partnership, related documents specific to the HOPE VI development
  construction management or supervision services
  A&E fees paid to architectural or engineering firms for planning, design, or construction administration services
- accounting services for modeling of equity returns, tax credit compliance certifications
- permit fees: city/county/state processing reviews
- impact fees
- soil testing

- housing surveys and market studies
- blueprints and document copies not provided under A&E contract
- printing of construction documents and RFPs for developers
- tap and utility fees
- fees for escrow and disbursing services during construction

BLI 1440 - SITE ACQUISITION

Costs associated with the actual purchase or other acquisition of land, with or without improvements, by the Grantee are appropriate for BLI 1440. All site acquisition, whether the site is intended for dwelling structures, nondwelling structures, recreation areas, or other uses, are applicable under BLI 1440. Activities such as demolition, site preparation, or construction that takes place after a site is acquired should be itemized under the appropriate BLIs, NOT under 1440.

Specific Eligible Costs

- land and improvements
- raw land
- condemnation costs
- surveys and maps
- appraisal
- closing costs
- broker fees
- title information
- legal costs for site
- option negotiations
- current tax settlement
- recording fees, transfer taxes
- market study for acquisition
- funds used to collateralize, or pay interest on, bonds or loans, where the proceeds will be used for acquisition in Main Street grants

BLI 1450 - SITE IMPROVEMENTS

Site Improvements are those activities performed on a site that prepare it for its intended use. If subsequent construction will be performed on the site, site improvements are those that make it a buildable site and include the cost of site infrastructure required to support the development of housing units. If the site will be used as a park or recreation area with no construction, site improvements may include such activities as grading, landscaping, and lighting. Any kind of construction or rehabilitation does NOT constitute site improvements. Costs for any site improvements made strictly for the purposes of heightened security should be placed under 1408 (Management Improvements).

Specific Eligible Costs

- site clearance, except that demolition activities should be placed under BLI 1985
- drainage
- grading
- sewers and utilities, including utility transformers, distribution cables, and meters, and the provision of these services to individual housing units
- parking lots
- sidewalks
- landscaping
- streets and alleys, including curbs and gutters
- fencing
- surfacing of outdoor play areas, including structural playground facilities (playground equipment should be included in BLI 1475)
- exterior lighting (lighting of recreation facilities should be included in 1475)
- escrowed funds used to collateralize, or pay interest on, bonds or loans, where the proceeds will be used for site improvements in Main Street grants

BLI 1460 - DWELLING STRUCTURES

All costs of construction or rehabilitation of dwelling structures should be listed under this BLI.

Specific Eligible Costs

- excavation and backfill, foundations
- renovation and reconfiguration of remaining buildings
- construction of replacement housing
- loans to development partners for the development of public housing
- rehabilitation of acquired scattered sites
- construction of homeownership units
- soft second mortgages/construction writedowns for homeownership
- initial operating deficit
- contractor profit, overhead, contingency, and general conditions
- collateralization of bonds
- utilities from the street
- finished landscaping
- escrowed funds used to collateralize, or pay interest on, bonds or loans, where the proceeds will be used for dwelling structures in Main Street grants

BLI 1465 - DWELLING EQUIPMENT - NONEXPENDABLE

Nonexpendable Dwelling Equipment includes, among other things, equipment installed in or directly related to dwellings, as opposed to Community Space.

- appliances installed in individual dwelling units
- laundry appliances installed in common space located within dwelling buildings
- security equipment

BLI 1470 - NONDWELLING STRUCTURES

The hard cost of construction of nondwelling structures, including any kind of building that contains facilities other than living space. They may include community centers, daycare facilities, recreation centers, standalone laundry facilities, security offices, separate rental or maintenance offices, or parking structures.

Specific Eligible Costs

- renovation or new construction of Community Building or Neighborhood Networks Center
- construction/conversion of center for leasing, property management, and/or maintenance
- construction of laundry room
- costs associated with negotiations, appraisal, legal fees for non-dwelling structures development and/or rehab
- construction of parking garage
- construction of resident enterprise facility

BLI 1475 - NONDWELLING EQUIPMENT

Nondwelling equipment includes the costs of furniture and equipment that will not be associated with living spaces. Nonexpendable equipment to be purchased under the grant for community and supportive services should be included in BLI 1408.

Specific Eligible Costs

- laundry appliances installed in non-dwelling areas
- office furniture equipment for leasing/management/maintenance building (fax machines, copiers, computers, telephones)
- furnishings for non-dwelling facilities
- computer and internet hardware for Neighborhood Networks grants.

BLI 1485 - DEMOLITION COSTS

All costs associated with the demolition and remediation of dwelling and non-dwelling structures must be placed under BLI 1485. Grantees should budget no more than $10,000 per unit for abatement and demolition, and in most cases the cost per unit should be less than $10,000. Any budget amount over $10,000 per unit must be justified in detail. The description on Part II of the budget must distinguish between costs related to existing public housing property and costs related to acquisition of a new public housing site. Demolition costs include:

- planning and professional services related to abatement/remediation of hazardous materials and demolition of buildings
- abatement/remediation of hazardous materials prior to demolition
- lead based paint insurance while work is in progress
- removal of structures, existing paving, foundations, utilities, and related infrastructure
- fencing and security during abatement and demolition, if necessary
- gutting dwelling units for permanent use as non-dwelling space, if the work is done pursuant to a HUD-approved demolition application
- escrowed funds used to collateralize, or pay interest on, bonds or loans, where the proceeds will be used for demolition or remediation in Main Street grants

BLI 1495 - RELOCATION COSTS

Relocation payments may include costs to permanently relocate residents of units approved for demolition, temporarily relocate residents of units to be reconfigured or rehabilitated, temporarily relocate residents until replacement housing is completed, or the costs associated with returning residents to HOPE VI housing. The description on Part II of the budget must distinguish between costs related to relocation from existing public housing property and costs related to relocation from an acquired public housing site.

Relocation costs should be limited to a maximum of $3,000 per family, including the cost of two moves for families who return to replacement housing from temporary relocation. Any budget amount over $3,000 per family must be justified in detail.

Replacement housing payments for the purchase of private housing should be placed in 1460.

Specific Eligible Costs

- moving costs
- reconnection of utilities, including telephone and cable
- security deposits
- relocation counseling
- assistance in locating housing
- salaries of PHA relocation staff and/or relocation contractors managing the relocation process
- costs of temporary relocation offices
- settlement costs for occupants displaced by acquisition of property

HOPE VI Budget

Part I: Summary

U. S. Department of Housing and Urban Development

Office of Public and Indian Housing

OMB Approval No. 2577-0208 (exp. 3/31/2007)

Public Reporting Burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.
This information is necessary to provide details on the funds requested by Housing Authorities. The form displays the amount requested, broken down by budget line item, with each use explained on Part II. The requested information will be reviewed by HUD to determine if the amount requested is reasonable and whether the required percentages of capital and supportive services funds are met.
Responses to the collection are required by the appropriation under which the HOPE VI grant was funded. The information collected does not lend itself to confidentiality.
HUD may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number.

PHA Name: ____________________ HOPE VI Grant Number: ____________________

Devel. Name: ____________________ Budget Revision Number: ____________________

Line No.	Summary by Budget Line Item	Revised Overall HOPE VI Budget for All Project Phases	Previous Authorized Amount of Funds in LOCCS	Changes Requested in this Revision	HUD-Approved Total Authorized Amount of Funds in LOCCS
1	1408 Management Improvements/ Community and Supportive Services				
2	1410 Administration				
3	1430 Fees and Costs				
4	1440 Site Acquisition				
5	1450 Site Improvement				
6	1460 Dwelling Structures				
7	1465 Dwelling Equipment-Nonexpendable				
8	1470 Nondwelling Structures				
9	1475 Nondwelling Equipment				
10	1485 Demolition				
11	1495 Relocation Costs				
12	**Total Funds Authorization** (Sum Of Lines 1-11)				
13	U2000 Funds held in Reserve				
14	**Amount of HOPE VI Grant** (Sum Of Lines 1-13)				

Signature of PHA Executive Director

X Date

HUD Certification: In approving this budget and providing assistance to a specific housing development(s), I hereby certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources (24 CFR 12.50).

Signature of Authorized HUD Official

X Date

form **HUD-52825-A** (12/2003)

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Prior Bdgt Date	PHA:	Budget Revision Number	Grant Number
	Development Name:		

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8
1408	MANAGEMENT IMPROVEMENTS / COMMUNITY AND SUPPORTIVE SERVICES						
Prior Bdgt Date	Total Changes						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL	$ -					
	Percentage of BLI Budget						
1410	ADMINISTRATION						
Prior Bdgt Date	Total Changes						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL	$ -					
	Percentage of BLI Budget						

form HUD-52825-A

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8

1430	FEES AND COSTS						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
NEW TOTALS FOR HUD APPROVAL		$ -					
Percentage of BLI Budget							

1440	SITE ACQUISITION						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
NEW TOTALS FOR HUD APPROVAL		$ -					
Percentage of BLI Budget							

form HUD-52825-A

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8

1450	SITE IMPROVEMENTS						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL	$ -					
	Percentage of BLI Budget						

1460	DWELLING STRUCTURES						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL	$ -					
	Percentage of BLI Budget						

form HUD-52825-A

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8

Budget Line Item Number	Description	3	4	5	6	7	8
1465	DWELLING EQUIPMENT - NONEXPENDABLE						
Prior Bdgt Date	Total Changes						
	Previous Approved Budget Totals						
NEW TOTALS FOR HUD APPROVAL		$ -					
Percentage of BLI Budget							

Budget Line Item Number	Description	3	4	5	6	7	8
1470	NONDWELLING STRUCTURES						
Prior Bdgt Date	Total Changes						
	Previous Approved Budget Totals						
NEW TOTALS FOR HUD APPROVAL		$ -					
Percentage of BLI Budget							

form HUD-52825-A

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8

1475	NONDWELLING EQUIPMENT						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL	$ -					
	Percentage of BLI Budget						

1485	DEMOLITION						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL	$ -					
	Percentage of BLI Budget						

form HUD-52825-A

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8
1495	RELOCATION COSTS						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals	$ -					
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						

Total Changes						
Previous Approved Budget Totals						
NEW BLI TOTAL	$ -					

form HUD-52825-A

America's Affordable Communities Initiative	U.S. Department of Housing and Urban Development	OMB approval no. 2510-0013 (exp. 03/31/2007)

Public reporting burden for this collection of information is estimated to average 3 hours. This includes the time for collecting, reviewing, and reporting the data. The information will be used for encourage applicants to pursue and promote efforts to remove regulatory barriers to affordable housing. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Questionnaire for HUD's Initiative on Removal of Regulatory Barriers

Part A. Local Jurisdictions. Counties Exercising Land Use and Building Regulatory Authority and Other Applicants Applying for Projects Located in such Jurisdictions or Counties [Collectively, Jurisdiction]

	1	2
1. Does your jurisdiction's comprehensive plan (or in the case of a tribe or TDHE, a local Indian Housing Plan) include a "housing element? A local comprehensive plan means the adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction and that includes a unified physical plan for the public development of land and water. If your jurisdiction does not have a local comprehensive plan with a "housing element," please enter no. If no, skip to question # 4.	☐ No	☐ Yes
2. If your jurisdiction has a comprehensive plan with a housing element, does the plan provide estimates of current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate and middle income families, for at least the next five years?	☐ No	☐ Yes
3. Does your zoning ordinance and map, development and subdivision regulations or other land use controls conform to the jurisdiction's comprehensive plan regarding housing needs by providing: a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped "as of right" in these categories, that can permit the building of affordable housing addressing the needs identified in the plan? (For purposes of this notice, "as-of-right," as applied to zoning, means uses and development standards that are determined in advance and specifically authorized by the zoning ordinance. The ordinance is largely self-enforcing because little or no discretion occurs in its administration.). If the jurisdiction has chosen not to have either zoning, or other development controls that have varying standards based upon districts or zones, the applicant may also enter yes.	☐ No	☐ Yes
4. Does your jurisdiction's zoning ordinance set minimum building size requirements that exceed the local housing or health code or is otherwise not based upon explicit health standards?	☐ Yes	☐ No

5. If your jurisdiction has development impact fees, are the fees specified and calculated under local or state statutory criteria? If no, skip to question #7. Alternatively, if your jurisdiction does not have impact fees, you may enter yes.	☐ No	☐ Yes
6. If yes to question #5, does the statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus), and a method for fee calculation?	☐ No	☐ Yes
7. If your jurisdiction has impact or other significant fees, does the jurisdiction provide waivers of these fees for affordable housing?	☐ No	☐ Yes
8. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "*Smart Codes in Your Community: A Guide to Building Rehabilitation Codes*" (www.huduser.org/publications/destech/smartcodes.html)	☐ No	☐ Yes
9. Does your jurisdiction use a recent version (i.e. published within the last 5 years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification. In the case of a tribe or TDHE, has a recent version of one of the model building codes as described above been adopted or, alternatively, has the tribe or TDHE adopted a building code that is substantially equivalent to one or more of the recognized model building codes? Alternatively, if a significant technical amendment has been made to the above model codes, can the jurisdiction supply supporting data that the amendments do not negatively impact affordability.	☐ No	☐ Yes
10. Does your jurisdiction's zoning ordinance or land use regulations permit manufactured (HUD-Code) housing "as of right" in all residential districts and zoning classifications in which similar site-built housing is permitted, subject to design, density, building size, foundation requirements, and other similar requirements applicable to other housing that will be deemed realty, irrespective of the method of production?	☐ No	☐ Yes

11. Within the past five years, has a jurisdiction official (i.e., chief executive, mayor, county chairman, city manager, administrator, or a tribally recognized official, etc.), the local legislative body, or planning commission, directly, or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or hearings, or has the jurisdiction established a formal ongoing process, to review the rules, regulations, development standards, and processes of the jurisdiction to assess their impact on the supply of affordable housing?	☐ No	☐ Yes
12. Within the past five years, has the jurisdiction initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the jurisdiction's "HUD Consolidated Plan?" If yes, attach a brief list of these major regulatory reforms.	☐ No	☐ Yes
13. Within the past five years has your jurisdiction modified infrastructure standards and/or authorized the use of new infrastructure technologies (*e.g.* water, sewer, street width) to significantly reduce the cost of housing?	☐ No	☐ Yes
14. Does your jurisdiction give "as-of-right" density bonuses sufficient to offset the cost of building below market units as an incentive for any market rate residential development that includes a portion of affordable housing? (As applied to density bonuses, "as of right" means a density bonus granted for a fixed percentage or number of additional market rate dwelling units in exchange for the provision of a fixed number or percentage of affordable dwelling units and without the use of discretion in determining the number of additional market rate units.)	☐ No	☐ Yes
15. Has your jurisdiction established a single, consolidated permit application process for housing development that includes building, zoning, engineering, environmental, and related permits? Alternatively, does your jurisdiction conduct concurrent, not sequential, reviews for all required permits and approvals?	☐ No	☐ Yes
16. Does your jurisdiction provide for expedited or "fast track" permitting and approvals for all affordable housing projects in your community?	☐ No	☐ Yes
17. Has your jurisdiction established time limits for government review and approval or disapproval of development permits in which failure to act, after the application is deemed complete, by the government within the designated time period, results in automatic approval?	☐ No	☐ Yes
18. Does your jurisdiction allow "accessory apartments" either as: a) a special exception or conditional use in all single-family residential zones or, b) "as of right" in a majority of residential districts otherwise zoned for single-family housing?	☐ No	☐ Yes
19. Does your jurisdiction have an explicit policy that adjusts or waives existing parking requirements for all affordable housing developments?	☐ No	☐ Yes
20. Does your jurisdiction require affordable housing projects to undergo public review or special hearings when the project is otherwise in full compliance with the zoning ordinance and other development regulations?	☐ Yes	☐ No
Total Points:		

Part B. State Agencies and Departments or Other Applicants for Projects Located in Unincorporated Areas or Areas Otherwise Not Covered in Part A

		1	2
1	Does your state, either in its planning and zoning enabling legislation or in any other legislation, require localities regulating development have a comprehensive plan with a "housing element?" If no, skip to question # 4	☐ No	☐ Yes
2.	Does you state require that a local jurisdiction's comprehensive plan estimate current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate, and middle income families, for at least the next five years?	☐ No	☐ Yes
3.	Does your state's zoning enabling legislation require that a local jurisdiction's zoning ordinance have a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped in these categories, that can permit the building of affordable housing that addresses the needs identified in the comprehensive plan?	☐ No	☐ Yes
4.	Does your state have an agency or office that includes a specific mission to determine whether local governments have policies or procedures that are raising costs or otherwise discouraging affordable housing?	☐ No	☐ Yes
5.	Does your state have a legal or administrative requirement that local governments undertake periodic self-evaluation of regulations and processes to assess their impact upon housing affordability address these barriers to affordability?	☐ No	☐ Yes
6.	Does your state have a technical assistance or education program for local jurisdictions that includes assisting them in identifying regulatory barriers and in recommending strategies to local governments for their removal?	☐ No	☐ Yes
7.	Does your state have specific enabling legislation for local impact fees? If no skip to question #9.	☐ No	☐ Yes
8.	If yes to the question #7, does the state statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (*nexus*) and a method for fee calculation?	☐ No	☐ Yes
9.	Does your state provide significant financial assistance to local governments for housing, community development and/or transportation that includes funding prioritization or linking funding on the basis of local regulatory barrier removal activities?	☐ No	☐ Yes

10. Does your state have a mandatory state-wide building code that a) does not permit local technical amendments and b) uses a recent version (i.e. published within the last five years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification? Alternatively, if the state has made significant technical amendment to the model code, can the state supply supporting data that the amendments do not negatively impact affordability?	☐ No	☐ Yes
11. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "*Smart Codes in Your Community: A Guide to Building Rehabilitation Codes*" (www.huduser.org/publications/destech/smartcodes.html)	☐ No	☐ Yes
12. Within the past five years has your state made any changes to its own processes or requirements to streamline or consolidate the state's own approval processes involving permits for water or wastewater, environmental review, or other State-administered permits or programs involving housing development. If yes, briefly list these changes.	☐ No	☐ Yes
13. Within the past five years, has your state (i.e., Governor, legislature, planning department) directly or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or panels to review state or local rules, regulations, development standards, and processes to assess their impact on the supply of affordable housing?	☐ No	☐ Yes
14. Within the past five years, has the state initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the states' "Consolidated Plan submitted to HUD?" If yes, briefly list these major regulatory reforms.	☐ No	☐ Yes
15. Has the state undertaken any other actions regarding local jurisdiction's regulation of housing development including permitting, land use, building or subdivision regulations, or other related administrative procedures? If yes, briefly list these actions.	☐ No	☐ Yes
Total Points:		

Certification of Consistency with the RC/EZ/EC-IIs Strategic Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in this application are consistent with the strategic plan of a federally-designated empowerment zone (EZs), renewal community (RCs), or enterprise community (ECs); designated by the United States Department of Agriculture (USDA) in round II (EC-IIs).

(Type or clearly print the following information)

Applicant Name ____

Name of the Federal Program to which the applicant is applying ____

Name of RC/EZ/EC ____

I further certify that the proposed activities/projects will be located within theRC/EZ/EC-IIs or strategic planning communities that are intended to serve the RC/EZ/EC-IIs strategic planning community residents, or renewal community. (2 points)

Name of the Official Authorized to Certify the RC/EZ/EC ____

Title ____

Signature ____

Date (mm/dd/yyyy) ______________________

Third Party Documentation Facsimile Transmittal

U. S. Department of Housing and Urban Development
Office of Department Grants Management and Oversight

OMB Approval No. 2535-0118 (exp. 04/30/2005)

1. Applicant Information		3. Facsimile Contact Information	
a. Legal Name:		a. Department:	
		b. Division	
b. Address: Street:		4. Name and telephone number of person to be contacted on matters involving this facsimile.	
City:	County:	Prefix:	First Name:
State:	Zip Code	Middle Initial:	Last Name:
c. Country		5. Email:	
d. DUNS Number:			

2. a. Catalog of Federal Domestic Assistance Number: CFDA No. ___ ___.___ ___ ___	Phone number (include area code)		Fax number (include area code)	
b. Title (Name of Program)	6. What is your transmittal? (Check one box per fax)			
c. Program Component	b. Certification ☐	c. Document ☐	d. Match/Leverage Letter ☐	e. Other ☐
	7. How many pages (including cover) are being faxed?			

form **HUD-96011** (12/2004)

Third Party Documentation Facsimile Transmittal

U. S. Department of Housing and Urban Development
Office of Department Grants Management and Oversight

OMB Approval No. 2535-0118 (exp. 04/30/2005)

Public reporting burden for this collection of information is estimated to average 6 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.
This form is used for third party applicants as required for applications submissions and other materials that are not normally available as electronic files, e.g. leverage letters, documentation from books, reports or other such items. This information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Instructions

IMPORTANT NOTE: If you have completed the SF 424 Request for Federal Assistance form, data fields will be pre-populated within this form.

Item	Entry
1. a-d Applicant Information	a. Enter legal name of applicant, name of primary organization unit (including division, if applicable), which will undertake the assistance activity. b. Enter the complete address, Street, City, County, State and Zip Code. c. Enter the country, i.e. USA. d. Enter the DUNS number (received from DUN and Bradstreet).
2. a-c. Catalog of Federal Domestic Assistance number and title of the program and program component.	a. Enter the Catalog of Federal Domestic Assistance number of the program you are apply for federal assistance. b. Enter the title of the program which assistance is requested. c. Enter program component under which assistance is requested. If there are no sub categories within a program you may leave ***"program component"*** blank. (For example: CFDA: 14.123)
3. a-b. Facsimile Contact Information	**a.** Enter the name of the Department and/or **b**. Division in which this facsimile is being transmitted.
4. Name and telephone number	Enter name, email and telephone number *(remember to include area code)* of person to be contacted on matters involving the transmitting fax.
5. Email	Enter email address of person to contacted regarding facsimile.
6. b-d What are you transmitting/number of pages?	**a.** What are you transmitting? Check the appropriate box indicating what type of document you are transmitting, **b**. certification, **c**. document, **d.** letter, or **e.** other. For example, if you are transmitting a Memorandum of Understanding (MOU) this would be considered a document so you would check ☐ ***document.***. *Please note: for each document you are transmitting a separate cover page is needed.*
7. How many pages are being faxed?	Indicate how many pages including the cover are being faxed.

Logic Model

U.S. Department of Housing and Urban Development
Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114
(exp. 12/31/2006)

Program Name:____________________

Component Name:____________________

Strategic Goals	Policy Priorities	Problem, Need, Situation	Service or Activity	Benchmarks		Outcomes		Measurement Reporting Tools	Evaluation Process
				Output Goal	Output Result	Achievement Outcome Goals	End Results		
1		2	3	4	5	6	7	8	9
Policy		Planning		Intervention		Impact		Accountability	
				Short Term				a. b. c. d. e.	
				Intermediate Term				a. b. c. d. e.	
				Long Term				a. b. c. d. e.	

form **HUD-96010** (02/2005)

Logic Model Instructions U.S. Department of Housing And Urban Development Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114 (exp. 12/31/2006)

Instructions:

Responses to rating factor five should be in this format. Your response should be in bullet format rather than narrative. Please read each NOFA carefully to ensure the performance measures requested for this factor are reflected on the logic model form.

Program Name: The HUD funding program under which you are applying. If you are applying for a component of a program please include the Program Name as well as the Component Name.

Component Name: The HUD funding program under which you are applying.

Column 1: ***HUD's Strategic Goals***: Indicate in this column **the number** of the goal(s) that your proposed service or activity is designed to achieve. HUD's strategic goals are:

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

Policy Priority: Indicate in this column **the number** of the HUD Policy Priority(ies), if any, your proposed service or activity promotes. Applicants are encouraged to undertake specific activities that will assist the Department in implementing its Policy Priorities. HUD's Policy Priorities are:

1. Provide Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organization in HUD Program Implementation.
5. Participation of Minority-Serving Institutions in HUD Programs
6. Ending Chronic Homelessness.
7. Removal of Barriers to Affordable Housing.
8. Participation in Energy Star.

Column 2: **Problem, Need, or Situation**: Provide a general statement of need that provides the rationale for the proposed service or activity.

Column 3: **Service or Activity:** Identify the activities or services that you are undertaking in your work plan, which are crucial to the success of your program. Not every activity or service yields a direct outcome.

Column 4 and Column 5: **Benchmarks:** These columns ask you to identify benchmarks that will be used in measuring the progress of your services or activities. Column 4 asks for specific interim or final products (called outputs) that you establish for your program's services or activities. Column 5 should identify the results associated with the product or output. These may be numerical measures characterizing the results of a program activity, service or intervention and are used to measure performance. These outputs should lead to targets for achievement of outcomes. Results should be represented by both the actual # and % of the goal achieved.

Column 4: **Benchmarks/Output Goal:** Set quantifiable output goals, including timeframes. These should be products or interim products, which will allow you and HUD to monitor and assess your progress in achieving your program workplan.

Column 5: **Benchmark/ Output Result:** Report actual result of your benchmarks. The actual result could be number of housing units developed or rehabilitated, jobs created, or number of persons assisted. Outputs may be short, intermediate or long-term. ***(Do not fill out this section with the application)***

Column 6 and Column 7: **Outcomes:** Column 6 and Column 7 ask you to report on your expected and actual outcomes – the ultimate impact you hope to achieve. Column 6 asks you to identify outcomes in terms of the impact on the community, people's lives, changes in economic or social status, etc. Column 7 asks for the actual result of the outcome measure listed in Column 6, which should be updated as applicable.

Column 6: **Outcomes/ Goals:** Identify the outcomes that resulted in broader impacts for individuals, families/households, and/or the community. For example, the program may seek to improve the environmental conditions in a neighborhood, increase affordable housing, increase the assets of a low-income family, or improve self-sufficiency.

Proxy Outcome(s): Often direct measurement of the intended outcome is difficult or even impossible -- to measure. In these cases, applicants/grantees should use a proxy or surrogate measure that corresponds with the desired outcome. For example, improving quality of life in a neighborhood could be measured by a proxy indicator such as increases in home prices or decreases in crime. Training programs could be measured by the participant's increased wages or reading skills. The person receiving the service must meet eligibility requirements of the program.

Column 7: **Outcomes/Actual Result:** Identify specific achievements of outcomes listed in Column 6. ***(Do not fill out this section with the application)***

Column 8: **Measurement Reporting Tools:** (a) List the tools used to track output or outcome information (e.g., survey instrument; attendance log; case report; pre-post test; waiting list; etc); (b) Identify the place where data is maintained, e.g. central database; individual case records; specialized access database, tax assessor database; local precinct; other; (c) Identify the location, e.g. on-site; subcontractor; other; (d) Indicate how often data is required to be collected, who will collect it and how often data is reported to HUD; and (e) Describe methods for retrieving data, e.g. data from case records is retrieved manually, data is maintained in an automated database. This tool will be available for HUD review and monitoring and should be used in submitting reporting information.

Column 9: **Evaluation Process:** Identify the methodology you will periodically use to assess your success in meeting your benchmark output goals and output results, outcomes associated to the achievement of the purposes of the program, as well as the impact that the work has made on the individuals assisted, the community, and the strategic goals of the Department. If you are not meeting the goals and results projected for your performance period, the evaluation process should be used as a tool to ensure that you can adjust schedules, timing, or business practices to ensure that goals are met within your performance period.

Race and Ethnic Data Reporting Form

U.S. Department of Housing and Urban Development
Office of Administration

OMB Approval No. 2535-0113
(exp. 10/31/2006)

Program Title:

Grantee/Recipient Name:

Grantee Reporting Organization:

Reporting Period From (mm/dd/yyyy): ____________ **To** (mm/dd/yyyy): ____________

Racial Categories	**Total Number of Race Responses**	**Total Number of Hispanic or Latino Responses**
American Indian or Alaska Native		
Asian		
Black or African American		
Native Hawaiian or Other Pacific Islander		
White		
American Indian or Alaska Native *and* White		
Asian *and* White		
Black or African American *and* White		
American Indian or Alaska Native *and* Black or African American		
* Other multiple race combinations greater than one percent: [Per the form instructions, write in a description using the box on the right]		
Balance of individuals reporting more than one race		
Total:	0	0

* If the aggregate count of any reported multiple race combination that is not listed above exceeds 1% of the total population being reported, you should separately indicate the combination. See detailed instructions under "Other multiple race combinations."

Public reporting burden for this collection is estimated to average 1.15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the information collection instrument. HUD may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Instructions for the Race and Ethnic Data Reporting form (HUD-27061)

A. General Instructions:

This form is intended to be used by two categories of respondents: (1) applicants requesting funding from the Department of Housing and Urban Development (HUD); and (2) organizations who receive HUD Federal financial assistance that are required to report race and ethnic information.

In compliance with OMB direction to revise the standards for collection of racial data, HUD has revised its standards as depicted on this form. The revised standards are designed to acknowledge the growing diversity of the U.S. population. Using the revised standards, HUD offers organizations that are responding to HUD data requests for racial information, the option of selecting one or more of nine racial categories to identify the racial demographics of the individuals and/or the communities they serve, or are proposing to serve. HUD's collection of racial data treats ethnicity as a separate category from race and has changed the terminology for certain racial and ethnic groups from the way it has been requested in the past using two distinct ethnic categories. The revised definitions of ethnicity and race have been standardized across the Federal government and are provided below.

1. The two ethnic categories as revised by the Office of Management and Budget (OMB) are defined below.

Hispanic or Latino. A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic" or "Latino."

Not Hispanic or Latino. A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

2. The five racial categories as revised by the Office of Management and Budget are defined below:

American Indian or Alaska Native. A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American. A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black" or "African American."

Native Hawaiian or Other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White. A person having origins in any of the original peoples of Europe, the Middle East or North Africa.

Note: The information required to be reported may be collected and submitted to HUD via the use of this form or by other means, such as summary reports or via electronic reporting mechanisms. The primary goal to be achieved is the provision of the summary racial and ethic data of the population(s) proposed to be served or that is being served by your organization in a consistent manner across all HUD programs.

B. Specific Instructions for Completing the Form:

Organizations using this form should collect the individual responses from the community of individuals you intend to serve or those that you are serving, as applicable. After the individual collections are gathered, you should report (via this form or by the use of other means such as electronic reports that provide the summary data required by this form) the aggregate totals of the racial and ethnic data that you collect via the applicable categories as described below:

Total Number of Racial Responses: Under this column you should indicate the total number of responses collected in the blocks next to the applicable categories.

Total Number of Hispanic or Latino Responses: Under this column you should indicate the total number of responses collected in the blocks next to the applicable racial categories (e.g., you would enter the total number of Asian respondents that indicated they are Hispanic or Latino). When collecting this information from beneficiaries of the Federal financial assistance all respondents should be required to indicate their ethnic category, which requires either a "yes" or "no" response.

Other Multiple Race Combinations: Next to this racial category, indicate all racial categories (if any) identified by respondents that do not fit one of the five single race categories or four double race combinations above, and which have a total count that exceeds one percent of the total population being reported. You must identify each such racial combination, including the actual count, the percentage of the total population (in parenthesis), and the actual Hispanic or Latino count.

For example, if you obtain data that indicates that the total population being served is 200 and includes 10 Native Hawaiian or Other Pacific Islander *and* White and 12 Native Hawaiian or Other Pacific Islander *and* Asian, and those numbers (of Native Hawaiian or Other Pacific Islander *and* White and Native Hawaiian or Other Pacific Islander *and* Asian) each equates to more than one percent of the total population being served, and 2 of the Native Hawaiian or Other Pacific Islander *and* White indicate they belong to the Hispanic/Latino ethic category and 3 of the Native Hawaiian or Other Pacific Islander *and* Asian indicate they belong to the Hispanic/Latino ethnic category, you should complete the form as follows:

Racial Categories	Total Number of Race Responses	Total Number of Hispanic or Latino Responses
* Other multiple race combinations: [Per the form instruction, write in a description using the box on the right]	Native Hawaiian or Other Pacific Islander AND White 10 (5%) Native Hawaiian or Other Pacific Islander AND Asian 12 (6%)	2 3

How the percentage should be applied will vary by program depending on whether the program is required to provide data on the total community, or on the beneficiaries/individuals that are being served or that are proposed to be served.

Balance of individuals reporting more than one race: This block is intended to capture the balance of any racial categories that are not included in the list of nine above, and are not included under **"Other multiple race combinations greater than on percent."** Indicate the total number of all racial categories reported that do not fit the nine racial categories above, and do not equate to one percent of the total population being reported. Be sure to also indicate the total number of all related Hispanic or Latino responses.

Total: On the last row of the form you should indicate the aggregate totals of all the information you have gathered including the total of all racial categories and the total of all the Hispanic or Latino categories.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 08/31/2006)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received
5. State the name and location (street address, City and State) of the project or activity:	

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD) , involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
☐ **Yes** ☐ **No.**

If you answered "**No**" to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.
I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:
   (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
   (2) You are updating a prior report as discussed below; or
   (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General**. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

   Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

   The following information must be provided:

   1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
   2. State the type of other government assistance (e.g., loan, grant, loan insurance).
   3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
   4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	a. bid/offer/application b. initial award c. post-award	a. initial filing b. material change **For Material Change Only:** year _______ quarter _______ date of last report _______

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ______, *if known*: **Congressional District**, *if known*: 4c	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _______
8. Federal Action Number, *if known*:	**9. Award Amount,** *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _______ Print Name: _______ Title: _______ Telephone No.: _______ Date: _______
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

[FR Doc. 05–14299 Filed 7–15–05; 4:17 pm]

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Federal Register

Thursday,
July 21, 2005

Part III

Securities and Exchange Commission

17 CFR Parts 230, 239, 240, and 249
Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240 and 249

[Release Nos. 33–8587; 34–52038; International Series Release No. 1293; File No. S7–19–04]

RIN 3235–AH88

Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting rules and rule amendments relating to filings by reporting shell companies. We are defining a ''shell company'' as a registrant with no or nominal operations and either no or nominal assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets. The rules and rule amendments prohibit the use of Form S–8 under the Securities Act of 1933 by shell companies. In addition, they require a shell company that is reporting an event that causes it to cease being a shell company to disclose the same type of information that it would be required to provide in registering a class of securities under the Securities Exchange Act of 1934. These provisions are intended to protect investors by deterring fraud and abuse in our securities markets through the use of reporting shell companies.

DATES: Effective August 22, 2005, except Item 5.06 of Exchange Act Form 8–K (referenced in § 249.308) will take effect on November 7, 2005.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549, at (202) 551–3260.

SUPPLEMENTARY INFORMATION: We are adopting rules and rule amendments designed to protect investors by deterring fraud and abuse in our securities markets through the use of reporting shell companies.[1] We are amending Form S–8 [2] under the Securities Act of 1933 [3] to prohibit use of the form by shell companies. We also are amending the requirements of Form 8–K [4] under the Securities Exchange Act of 1934 as they apply to shell companies. In addition, we are amending Rule 405 [5] under the Securities Act and Rule 12b–2 [6] under the Exchange Act to define the terms ''business combination related shell company'' and ''shell company,'' and amending Rule 12b–2 under the Exchange Act to revise the definition of the term ''succession.'' Further, we are amending Rule 13a–14 [7] and Rule 15d–14 [8] under the Exchange Act, adding new Rule 13a–19 [9] and new Rule 15d–19 [10] under the Exchange Act, and amending Form 20–F [11] under the Exchange Act to address the reporting obligations of foreign private issuers that are shell companies. Finally, we are amending Form 10–Q,[12] Form 10–QSB,[13] Form 10–K,[14] Form 10–KSB,[15] and Form 20–F under the Exchange Act to require companies to indicate on the cover page of those forms whether they fall within the definition of ''shell company.''

The rules and rule amendments we are adopting today do not address the relative merits of shell companies. We recognize that companies and their professional advisors often use shell companies for many legitimate corporate structuring purposes. Similarly, our definition and use of the term ''shell company'' is not intended to imply that shell companies are inherently fraudulent. Rather, these rules target regulatory problems that we have identified where shell companies have been used as vehicles to commit fraud and abuse our regulatory processes.

I. Introduction

On April 15, 2004, we proposed rules and rule amendments related to filings by reporting shell companies.[16] We proposed to define the term ''shell company.'' We also proposed to prohibit the use of Form S–8 under the Securities Act by shell companies. Additionally, we proposed to amend Form 8–K under the Exchange Act to require a shell company, when reporting an event that causes it to cease being a shell company, to file with the Commission the same type of information that it would be required to file in registering a class of securities under the Exchange Act.

In response to these proposals, we received approximately 30 comment letters from various interested parties, including investors, issuers, accountants, lawyers, and organizations. We have considered all of the comment letters and have incorporated certain of the suggestions in those letters in the final rules.

The provisions we adopt today address the inappropriate use of Form S–8 registration statements by reporting shell companies to circumvent the registration and prospectus delivery requirements of the Securities Act. Because shell companies do not operate businesses and, hence, rarely have employees, we see little legitimate basis for shell companies to use Form S–8. For this reason, and because of the history of abuse of Form S–8 by reporting shell companies, we are prohibiting shell companies from using Form S–8 until 60 days after they cease being shell companies and file required information. We have, however, included limited exceptions to this prohibition for shell companies that are used in certain change of domicile or business combination transactions.

The provisions we adopt today also address the use of Form 8–K to report ''reverse merger'' and other transactions in which a reporting shell company ceases being a shell company, generally by combining with a formerly private operating business. Through such a transaction, the private operating business, in effect, becomes a reporting company. These transactions generally take one of two forms:

- In the most common type of transaction, a ''reverse merger,'' the private business merges into the shell company, with the shell company surviving and the former shareholders of the private business controlling the surviving entity.
- In another common type of transaction, a ''back door registration,'' the shell company merges into the formerly private company, with the formerly private company surviving and the shareholders of the shell company becoming shareholders of the surviving entity.[17]

[1] In this release, we use the term reporting shell companies to refer to shell companies that have an obligation to file reports under Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

[2] 17 CFR 239.16b.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 249.308.

[5] 17 CFR 230.405.

[6] 17 CFR 240.12b–2.

[7] 17 CFR 240.13a–14.

[8] 17 CFR 240.15d–14.

[9] 17 CFR 240.13a–19.

[10] 17 CR 240.15d–19.

[11] 17 CFR 249.220f.

[12] 17 CFR 249.308a.

[13] 17 CFR 249.308b.

[14] 17 CFR 249.310.

[15] 17 CFR 249.310b.

[16] Release No. 33–8407, *Use of Form S–8 and Form 8–K by Shell Companies* (Apr. 15, 2004) [69 FR 21650].

[17] This was the type of transaction involved in the *Lisa Roberts, Director of NASDAQ Listing Qualifications* interpretive letter, which is discussed in footnote 36, below.

In these transactions, the reporting company has an obligation to file current reports on Form 8–K to report both the entry into a material non-ordinary course agreement providing for the transaction and the completion of the transaction. Specifically, in both types of transactions, the entry into the agreement would require a report under Item 1.01 of Form 8–K (Entry Into a Material Definitive Agreement) by the shell company. The completion of the transaction would be reportable under either or both of Item 2.01 of Form 8–K (Completion of Acquisition or Disposition of Assets) and Item 5.01 of Form 8–K (Changes in Control of Registrant) by the surviving entity.[18] Audited financial statements and *pro forma* financial information would be required to be filed under Item 9.01 of Form 8–K (Financial Statements and Exhibits) for transactions reportable under Item 2.01.[19]

II. Adopted Rules and Rule Amendments

We are adopting the rules and rule amendments substantially as proposed. The substantive changes to the proposals, as discussed below, are:

• We have revised the definition of ''shell company'' to specify the manner in which assets are to be determined and to exclude asset-backed issuers;[20]

• We have added a definition of the term ''business combination related shell company'' to specify those shell companies that are used to effect certain change in domicile and business combination transactions;

• We have provided limited exceptions to the amendments to Form S–8, Form 8–K, and Form 20–F for business combination related shell companies;

• We have added new Item 5.06 to Form 8–K to require shell companies (other than business combination related shell companies) to report transactions that cause them to cease being shell companies;

• We have added a check box to Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, and Form 20–F to identify shell companies filing those forms; and

• We have adopted rules and rule amendments requiring a foreign private issuer shell company to file a ''shell company report'' on Form 20–F to report a transaction that causes it to cease being a shell company.[21]

We are adopting the definition of the term ''shell company'' substantially as proposed. The adopted definition includes minor modifications, including:

• An exclusion for asset-backed issuers that might inadvertently fall within the definition;

• A clarification that a company would still be a shell company if its assets consist of any amount of cash and cash equivalents, as well as nominal other assets; and

• A clarification that the determination of the company's assets (including cash and cash equivalents) for purposes of the definition must be limited to the amount of assets that would be reflected on the company's balance sheet prepared in accordance with U.S. generally accepted accounting principles on the date of that determination.

We have defined the term ''business combination related shell company.'' We have adopted this definition to identify the subset of shell companies for which certain of the amendments to Form S–8, Form 8–K, and Form 20–F will not apply. We also have revised the definition of ''succession'' under the Exchange Act, as proposed, to capture certain transactions involving shell companies.

We are adopting amendments to Form S–8 that prohibit shell companies from using that form to register offerings of securities. A former shell company will become eligible to use Form S–8 to register offerings of securities 60 calendar days after it ceases being a shell company and files information equivalent to what it would be required to file if it were registering a class of securities on Form 10,[22] Form 10–SB,[23] or Form 20–F under the Exchange Act. We are adopting a limited exception to the Form S–8 prohibition that permits a former business combination related shell company to use Form S–8 immediately after it ceases being a shell company and files the required information.

The amendments to Form 8–K that we are adopting today apply to reporting shell companies, other than those that are foreign private issuers. The amendments require such a company, when reporting on Form 8–K an event that causes it to cease being a shell company, to include in that report the information that it would be required to file to register a class of securities under Section 12 of the Exchange Act[24] using Form 10 or Form 10–SB. The report is required to be filed within the same filing period as generally is required for other Form 8–K reports, which is within four business days after completion of the transaction. Further, the extension of time that otherwise may be permitted to file financial statements and *pro forma* financial information reflecting the new financial profile of the company following completion of a significant acquisition would be eliminated for shell companies. We are adopting similar reporting requirements for foreign private issuers on Form 20–F.

Finally, we are adding a check box to Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, and Form 20–F to allow market participants and regulators to identify shell companies more easily.

A. Definition of ''Shell Company''

1. Discussion of the Proposal

We proposed to define the term ''shell company'' as a company with no or nominal operations, and with no or nominal assets or assets consisting solely of cash and cash equivalents.[25] We proposed that this definition be added to Rule 405 under the Securities Act and Rule 12b–2 under the Exchange Act. We indicated in the proposing release that we intentionally were not proposing to use the term ''blank check

[18] In a back door registration transaction where time elapses between the entry into the agreement and the completion of the transaction, the shell company would incur the obligation to file the Item 1.01 Form 8–K at the time of entry into the agreement and either the shell company or the issuer that succeeds to the reporting obligation of the shell company by operation of either Rule 12g–3 (17 CFR 240.12g–3) or Rule 15d–5 (17 CFR 240.15d–5) under the Exchange Act would be obligated to file the Item 2.01 or Item 5.01 (or both) Form 8–K at the time of completion of the transaction. In a back door registration transaction that is simultaneously entered into and completed, or where the shell company has not yet satisfied its Item 1.01 obligation at the time of completion of the transaction, either the shell company or the issuer that succeeds to the reporting obligation of the shell company by operation of either Rule 12g–3 or Rule 15d–5 under the Exchange Act would be required to satisfy the shell company's obligation to file a Form 8–K under Item 1.01, as well as any other reporting obligations of the shell company (including obligations to file reports on Form 8–K pursuant to other Items of that Form).

[19] Other than new Item 5.06 of Form 8–K, the rule and form amendments adopted today are not intended to impose any new event filing requirements under Form 8–K.

[20] ''Asset-backed issuer'' is defined in Item 1101(b) of Regulation AB [17 CFR 229.1101(b)].

[21] The term ''foreign private issuer'' is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is a non-government foreign issuer, except for a company that (1) has more than 50% of its outstanding voting securities directly or indirectly held of record by U.S. residents and (2) has either a majority of its executive officers or directors residing in or being citizens of the United States, more than 50% of its assets located in the United States, or its business principally administered in the United States.

[22] 17 CFR 249.210.

[23] 17 CFR 249.210b.

[24] 15 U.S.C. 78*l*.

[25] As discussed in the proposing release, we intended that a shell company formed solely for the purpose of changing a company's domicile or completing a business combination transaction with another company would fall within the definition of shell company.

company'' used in Rule 419 [26] under the Securities Act because we believe the term ''shell company'' and our proposed definition of the term better describe the type of company involved in the schemes that we are attempting to address, use criteria that are more specific, and would be easier to apply.

2. Comments on the Proposal

Approximately ten commenters expressed their views regarding the proposed definition of ''shell company.'' Three commenters asked that the terms ''nominal operations'' and ''nominal assets'' be defined.[27] These commenters sought more guidance as to the meaning of these terms and quantitative thresholds for the term ''nominal.'' One of these commenters requested an objective test, such as specific quantitative thresholds tied to specific dollar amounts.[28]

Another commenter suggested that the proposed definition be modified to clarify that nominal assets appearing on a balance sheet prepared other than in accordance with generally accepted accounting principles do not qualify as assets for purposes of avoiding classification as a shell company.[29] Two commenters expressed support for a definition based on the term ''blank check company'' in Securities Act Rule 419 to describe the types of entities that should be subject to the Form S–8 and Form 8–K proposals.[30]

3. Final Rules

As adopted, Securities Act Rule 405 and Exchange Act Rule 12b–2 define a ''shell company'' as a company, other than an asset-backed issuer, with:

- No or nominal operations; and
- Either:

—No or nominal assets;
—Assets consisting solely of cash and cash equivalents; or
—Assets consisting of any amount of cash and cash equivalents and nominal other assets.

For purposes of this definition, the determination of a company's assets (including cash and cash equivalents) must be based on the amounts that would be reflected on the company's balance sheet prepared in accordance with U.S. generally accepted accounting principles on the date of that determination. We have added the language ''or assets consisting of any amount of cash and cash equivalents and nominal other assets'' to further clarify the definition. This clarification is consistent with the intended meaning of the proposed definition.

After considering the comments on our proposed definition of shell company, we continue to believe that the proposed definition best describes the types of companies involved in the schemes we are attempting to address and can be applied with certainty.[31] We do not believe that the suggestions in the comment letters would result in a significantly improved definition of shell company. Further, we believe that the definition reflects the traditional understanding of the term ''shell company'' in the area of corporate finance.

We are not defining the term ''nominal,'' as we believe that this term embodies the principle that we seek to apply and is not inappropriately vague or ambiguous.[32] We have considered the comment that a quantitative threshold would improve the definition of shell company; however, we believe that quantitative thresholds would, in this context, present a serious potential problem, as they would be more easily circumvented. We believe further specification of the meaning of ''nominal'' in the definition of ''shell company'' is unnecessary and would make circumventing the intent of our regulations and the fraudulent misuse of shell companies easier.

4. Definition of ''Business Combination Related Shell Company''

The definition of ''shell company'' includes a shell company that is used to change an entity's domicile and a shell company that is formed to effect a business combination transaction. As proposed, a shell company formed solely for the purpose of changing the domicile of a non-shell entity would have been permitted to use Form S–8 immediately after it ceased being a shell company and filed required information. In this regard, we received comment expressing the view that public companies formed to effect mergers, acquisitions, and public spin-off transactions also should be permitted to use Form S–8 within that timeframe.[33]

We believe that there is a subset of shell companies for which the delay in the use of Form S–8, as well as certain of the reporting requirements under Form 8–K and Form 20–F, as discussed below, are not necessary. Accordingly, we have defined the term ''business combination related shell company'' to identify those entities that we believe fall within this subset of shell companies. As adopted today, a ''business combination related shell company'' is:

- A shell company formed by an entity that is not a shell company solely for the purpose of changing that entity's domicile solely within the United States; [34] or
- A shell company formed by an entity that is not a shell company solely for the purpose of completing a business combination transaction among one or more entities other than the shell company, none of which is a shell company.[35]

B. Definition of ''Succession''

We are adopting as proposed the amendment to the definition of the term ''succession'' in Exchange Act Rule 12b–2 to include a change in control of a shell company that is required to be reported on Form 8–K pursuant to Item

[26] 17 CFR 230.419.

[27] *See* letters from L. Stephen Albright, North American Securities Administrators Association, Inc., and Stoecklein Law Group.

[28] *See* letter from North American Securities Administrators Association, Inc.

[29] *See* letter from Simon M. Lorne.

[30] *See* letters from David N. Feldman and Conrad C. Lysiak.

[31] One commenter discussed the application of the proposals to ''living dead'' companies. *See* letter from Mike Liles, Jr. As described in this comment letter, a ''living dead'' company is a former operating company with minimal or limited operations. We believe that a former operating company that meets the assets and operations standards in the definition of shell company would be subject to the rules and rule amendments that we are adopting today.

[32] We have become aware of a practice in which a promoter of a company and/or affiliates of the promoter appear to place assets or operations within an entity with the intent of causing that entity to fall outside of the definition of ''blank check company'' in Securities Act Rule 419. The promoter will then seek a business combination transaction for the company, with the assets or operations being returned to the promoter or affiliate upon the completion of that business combination transaction. It is likely that similar schemes will be undertaken with the intention of evading the definition of shell company that we are adopting today. In our view, where promoters (or their affiliates) of a company that would otherwise be a shell company place assets or operations in that company and those assets or operations are returned to the promoter or its affiliates (or an agreement is made to return those assets or operations to the promoter or its affiliates) before, upon completion of, or shortly after a business combination transaction by that company, those assets or operations would be considered ''nominal'' for purposes of the definition of shell company.

[33] *See* letter from Association of the Bar of the City of New York.

[34] The language in this definition referring to a shell company formed ''solely for the purpose of changing that entity's domicile solely within the United States'' is intended to have the same meaning as the language ''the sole purpose of the transaction is to change an issuer's domicile solely within the United States'' in Securities Act Rule 145(a)(2) [17 CFR 230.145(a)(2)].

[35] For purposes of this definition, the term ''business combination transaction'' will have the same meaning as in Securities Act Rule 165(f)(1) [17 CFR 230.165(f)(1)], which defines a ''business combination transaction'' as any transaction specified in Securities Act Rule 145(a) [17 CFR 230.145(a)] or exchange offer.

5.01 of that Form or on Form 20–F pursuant to new Exchange Act Rule 13a–19 or 15d–19. This amendment will, in most cases, require a non-public acquiring company to succeed to the reporting obligations of a shell company and become a reporting company.[36] For a shell company with securities registered under Section 12 of the Exchange Act, this will occur because Exchange Act Rule 12g–3 will, with limited exceptions, impose Section 12 registration on the securities of the acquiror without the necessity of filing an Exchange Act registration statement. Similarly, for a shell company with a reporting obligation under Section 15(d) of the Exchange Act, the acquiror may be deemed to have assumed the reporting obligation of the shell company by operation of Exchange Act Rule 15d–5. Because of the interaction of the revised definition of ''succession'' and Exchange Act Rules 12g–3 and 15d–5, a private entity that acquires a reporting shell company generally will report the transaction on Form 8–K, which in this case calls for Exchange Act registration-level disclosure, in accordance with the requirements of Form 8–K rather than filing an Exchange Act registration statement.[37] We believe this Form 8-K reporting requirement provides the appropriate timing, method, and level of disclosure to investors.

C. Amendments to Securities Act Form S–8

1. Discussion of the Proposal

We proposed amendments to prohibit the use of Form S–8 by any shell company. As proposed, a company that ceased being a shell company would become eligible to use Form S–8 to register offerings of securities 60 calendar days after it filed information equivalent to what it would be required to file if it were registering a class of securities under Section 12 of the Exchange Act through the use of Form 10, Form 10–SB, or Form 20–F, as applicable to that company.[38] On most occasions, this would occur upon the completion of a reverse merger or back door registration transaction, and the information would be filed in a current report on Form 8–K reporting the transaction that causes the company to cease being a shell company. In some circumstances the information could be filed in a Form 10, Form 10–SB, or Form 20–F, or in a Securities Act registration statement covering the transaction.

A registration statement on Form 10, Form 10–SB, or Form 20–F provides investors with important information about the company in which they are considering investing. The 60-day delay between the filing of that information and the use of Form S–8 was intended to give employees and the markets sufficient time to absorb the information provided by the company in its Form 8–K or other filing. The 60-day period is consistent with the 60-day period between the filing and effectiveness of a company's registration of a class of securities on Form 10, Form 10–SB, or Form 20–F under Section 12(g) of the Exchange Act.[39]

2. Comments on the Proposal

Most commenters expressed support for our initiative, through the Form S–8 proposal, to deter fraud and abuse in our securities markets by the use of shell companies. Eight commenters expressed the view that shell companies should, at least under certain circumstances, continue to be eligible to use Form S–8 for offering securities to officers, directors, and employees.[40] Three commenters proposed permitting a shell company to use Form S–8 to register offerings up to a percentage of its outstanding public float.[41] Three commenters agreed that the proposed 60-day waiting period should not be shortened.[42] Another commenter expressed the view that we should exclude public companies formed to effect mergers, acquisitions, and public spin-off transactions, as it is critical that such companies be able to use Form S–8 to register offerings of securities under employee benefit plans immediately after the closing of such transactions.[43] This same commenter stated that the 60-day waiting period in the Form S–8 proposal would be an unnecessary restriction on such a successor company's ability to sell shares in registered offerings pursuant to employee benefit plans.[44] The commenter proposed that shell companies be permitted to use Form S–8 immediately after their conversion to an operating company, particularly where another filing has been made that meets the disclosure requirements.

3. Final Rule

A registration statement on Form S–8 becomes effective upon filing with the Commission and does not require a prospectus to be filed as part of the registration statement.[45] Some shell companies seeking to distribute their securities and raise capital inappropriately use Form S–8. As we discussed in the proposing release, we continue to see the misuse of Form S–8 to register the sale of shares to purported employees or other nominees, who often are designated as ''consultants'' but who often do not provide services for which the company may offer securities in a transaction registered on Form S–8.[46] These schemes lead to unregistered resales of securities into the public market by these purported ''employees'' or ''consultants,'' denying the protections of the Securities Act to the real public purchasers of the company's securities.[47]

We are adopting the amendments to Form S–8 essentially as proposed, as we continue to believe that prohibiting the use of Form S–8 by shell companies

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[36] This definition, along with today's amendments to Form 8–K, supersedes the *Lisa Roberts, Director of NASDAQ Listing Qualifications* interpretive letter (Apr. 7, 2000). As explained in this interpretive letter, the procedure sometimes called ''back door registration'' under the Exchange Act did not, in the Commission staff's view at the time, constitute a ''succession'' of the surviving entity to the rights and obligations of the reporting shell company because the definition of ''succession'' in Exchange Act Rule 12b–2 requires that the acquiring company acquire a ''going business'' and a shell company was not considered a ''going business.'' Nevertheless, the staff permitted non-reporting acquiring companies to file Form 8–K reports and enter our reporting system, so long as specified information was included, rather than requiring these companies to file registration statements under Section 12 of the Act on Form 10 or Form 10–SB to become reporting companies.

[37] Foreign private issuers that do not report on domestic issuer forms, such as Form 10–K and Form 10–Q, are not subject to this requirement to report the transaction on Form 8–K. Rather, foreign private issuers will report the transaction on Form 20–F. *See* the discussion in Section II.E., below, with regard to the Exchange Act reporting requirements for a foreign private issuer that is a shell company and completes a transaction that causes it to cease being a shell company.

[38] The amendments to Form S–8 that we are adopting today will apply to foreign private issuers. For a further discussion of the application of the Form S–8 amendments to foreign private issuers, see the discussion in Section II.E., below.

[39] 15 U.S.C. 78*l*(g).

[40] *See* letters from L. Stephen Albright, American Society of Corporate Secretaries, David N. Feldman, Conrad C. Lysiak, James B. Parsons, John L. Petersen, Jay Sanet, and Michael T. Williams.

[41] *See* letters from James B. Parson, John L. Petersen, and Michael T. Williams.

[42] *See* letters from L. Stephen Albright, Jay Sanet, and Stoecklein Law Group.

[43] *See* letter from Association of the Bar of the City of New York.

[44] *See id.*

[45] *See* Securities Act Rules 462(a) and 428 [17 CFR 230.462(a) and 230.428].

[46] General Instruction A.1.(a)(1) to Form S–8 states that the form may be used to register securities to be offered and sold to consultants only if they are natural persons who provide *bona fide* services to the registrant that ''are not in connection with the offer or sale of securities in a capital raising transaction, and do not directly or indirectly promote or maintain a market for the registrant's securities.''

[47] *See* Release No. 33–7646, *Registration of Securities on Form S–8* (Feb. 26, 1999) [64 FR 11103].

justifies the burdens or costs that might be incurred. Accordingly, an entity may use Form S–8 to register offerings of securities pursuant to employee benefit plans only if:

• Immediately before the time of filing the registration statement, the entity is subject to the requirement to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act;

• The entity has filed all reports and other materials required to be filed by Section 13 or Section 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials);

• The entity is not a shell company and has not been a shell company for at least 60 days before filing the registration statement; and

• If the entity has been a shell company at any time, it has filed current ''Form 10 information'' with the Commission at least 60 days previously reflecting its status as an entity that is not a shell company.[48]

We have included exceptions to the Form S–8 prohibition to permit its use by certain shell companies that appear to present less potential for abuse. We proposed to permit certain shell companies that were used to change corporate domicile to use Form S–8 immediately after they cease being shell companies and file ''Form 10 information.'' We are maintaining this provision. In response to comments, we also are permitting certain shell companies that were formed solely to effect business combination transactions to use Form S–8 immediately after they cease being shell companies and file ''Form 10 information.'' We have taken two steps to accomplish these exceptions. First, we have defined ''business combination related shell company,'' as discussed previously, to identify the subset of shell companies that qualify for the exception. Second, we are providing in Form S–8 that a business combination related shell company may use Form S–8 immediately upon ceasing to be a shell company and filing ''Form 10 information.''[49]

We believe the amendments we are adopting today are appropriate, as we continue to see misuse of Form S–8 by shell companies and believe that prohibiting the use of Form S–8 by shell companies will help to deter fraud and abuse. Further, the commenters that indicated that shell companies should be eligible to use Form S–8 for offering securities to officers, directors, and employees provided only limited explanation as to why this practice should continue for all shell companies.

The prohibitions on the use of Form S–8 that we are adopting today will not prevent a shell company from registering offers and sales of securities pursuant to employee benefit plans under the Securities Act; rather, they will require the shell company to register those transactions on a registration statement form other than Form S–8. In addition, the shell company may be able to offer and sell those securities without registration pursuant to an available exemption under the Securities Act. We are aware that a different registration statement form may not provide the same ease of registration as Form S–8 and that the resale of securities originally sold in a transaction that is exempt from Securities Act registration likely would be treated differently under Securities Act Rule 144[50] than securities sold to employees in a registered transaction. We believe that the benefits of this amendment in preventing misuse of Form S–8, deterring fraud, and protecting investors substantially justify the potential disadvantages for shell companies.

D. Exchange Act Form 8–K

1. Discussion of the Proposal

We proposed amendments to Form 8–K to require a shell company (other than a foreign private issuer) to make a more prompt and detailed filing upon completion of a transaction otherwise required to be reported on that form that causes it to cease being a shell company. Specifically, the shell company would have been required to file a current report on Form 8–K containing the information that would be required in a registration statement on Form 10 or Form 10–SB to register a class of securities under Section 12 of the Exchange Act. We proposed that a company be required to file this report on Form 8–K within four business days after completion of the transaction, consistent with the timeframe for most Form 8–K filings.

We proposed elimination of the additional 71-day ''window'' for filing required financial information in a Form 8–K report filed pursuant to Item 2.01 of that form.[51] This window is the period of time between the date the registrant files its initial Form 8–K reporting the event and the date when the registrant is required to file financial information about the transaction. We believed that the elimination of the 71-day window would provide investors in operating businesses newly merged with shell companies with a level of information that is equivalent to the information provided to investors in reporting companies that did not originate as shell companies. The purpose for requiring this financial information at the time of the initial filing of the Form 8–K report was to decrease opportunities to engage in fraudulent and manipulative activity during the 71-day window period.

2. Comments on the Proposal

The comments responding to the Form 8–K proposal were varied. Four commenters expressed concern with the difficulty of preparing the required information and completing the filing of the required disclosure on Form 8–K within four days.[52] Three commenters also expressed concern over the amount of disclosure that was proposed to be included in the Form 8–K.[53] Each of those commenters believed that less information than the information equivalent to that required in a Form 10 or Form 10–SB would be adequate. Two of the commenters suggested that a level of information similar to that required under Exchange Act Schedule 14A[54] would be adequate,[55] with the other commenter expressing the view that it would be appropriate to require only certain of the Form 10 or Form 10–SB information.[56] Two commenters suggested that the shell company be permitted to delay filing its required disclosure if there was no trading in its securities.[57] One of these commenters suggested retaining the 71-day window, but limiting the trading in the shell company's securities by specified persons during that window.[58]

Eight commenters supported the adoption of the Form 8–K proposal to provide information to investors and deter fraud and abuse by shell companies.[59] The commenters

[48] For purposes of Form S–8, we define the term ''Form 10 information'' to mean the information that is required by Form 10, Form 10–SB, or Form 20–F, as applicable to the registrant, to register under the Exchange Act each class of securities being registered on the Form S–8.

[49] *See* new General Instruction A.1.(a)(7) to Form S–8.

[50] 17 CFR 230.144.

[51] *See* Item 9.01 of Form 8–K.

[52] *See* letters from L. Stephen Albright, David N. Feldman, Mike Liles, Jr., and James B. Parsons.

[53] *See* letters from L. Stephen Albright, David N. Feldman, and James M. Schneider.

[54] 17 CFR 240.14a–101.

[55] *See* letters from L. Stephen Albright and James M. Schneider.

[56] *See* letter from David N. Feldman.

[57] *See* letters from David N. Feldman and Mike Liles, Jr.

[58] *See* letter from Mike Liles, Jr.

[59] *See* letters from L. Stephen Albright, Nathan Garnett, Simon M. Lorne, North American Securities Administrators Association, Inc., James

supported the proposed rulemaking as an opportunity for the Commission to provide a disincentive for shell company abuse. Four commenters supported closing the 71-day window, on the grounds that this would deter fraud and abuse.[60] Two of these commenters suggested that the Commission consider a compromise of between 15 and 45 days.[61] One of these commenters stated that the financial statements are ''vital to an understanding'' of the transaction and that the closing of the merger transaction should be delayed until such time as the financial statements are properly prepared.[62]

3. Final Rule

We are adopting the Form 8–K amendments substantially as proposed. The amendments to Form 8–K will require the surviving entity [63] in a transaction where a shell company ceases being a shell company to make a more specific and detailed filing upon completion of such a transaction that is required to be reported on that form.[64] These transactions will fall within the requirements of either or both of Item 2.01 and Item 5.01 of Form 8–K.[65] Upon completion of this type of transaction, the surviving entity will be required to file a current report on Form 8–K containing the information, including financial information, that would be required in a registration statement on Form 10 or Form 10–SB to register a class of securities under Section 12 of the Exchange Act, with that information reflecting the surviving entity and its securities upon consummation of the transaction.[66]

We are requiring that the surviving entity file its report on Form 8–K within four business days after completion of the transaction that it is required to report. While we understand the concerns of commenters regarding this timeframe, we believe the timeframe is appropriate because shell companies and their counsel control the pace and timing of these transactions. Given the concerns unique to shell company transactions, we believe shell companies should complete a transaction that is required to be reported only when they can timely provide investors with adequate information to make informed investment decisions.[67] Moreover, obtaining audited financial statements for the operating business in such a transaction should not present the difficulties that caused us to provide the extended filing window for business combinations involving reporting companies with operations.[68]

We believe that prompt and proper disclosure of Exchange Act registration-level information at the time of shell company transactions will deter abuse and provide investors with information necessary for their investment decisions. Accordingly, we believe it is appropriate to require Form 10 or Form 10–SB information, as applicable, in the Form 8–K. This level of disclosure will provide investors in operating businesses newly merged with shell companies with prompt and detailed disclosure that is equivalent to the information provided to investors in reporting companies that register under the Exchange Act rather than reaching the same result through a transaction with a reporting shell company.

We are adding new Item 5.06 to Form 8–K.[69] New Item 5.06 will require a shell company that completes a transaction in which it ceases being a shell company to file a report under that Item reporting the material terms of the transaction. If the shell company is not the surviving entity in the transaction in which it ceases to be a shell company, the surviving entity would succeed to the shell company's obligation to comply with Item 5.06.[70] New Item 5.06 will allow market participants and regulators to more easily identify Form 8–K filings regarding shell company transactions and to more completely understand the terms of those transactions.

Business combination related shell companies will not be subject to the requirements of Item 5.06. We believe this will enhance the use of Item 5.06 as a means by which market participants and regulators may identify filings on Form 8–K relating to shell company transactions that are not change in domicile transactions or

B. Parsons, John Peterson, Stoecklein Law Group, and Michael T. Williams.

[60] *See* letters from L. Stephen Albright, James B. Parsons, North American Securities Administrators Association, Inc., and Stoecklein Law Group.

[61] *See* letters from L. Stephen Albright and James B. Parsons.

[62] *See* letter from Stoecklein Law Group.

[63] If a class of securities of an issuer succeeds, by operation of Exchange Act Rule 12g–3, to the registration under Exchange Act Section 12 of a class of the shell company's securities, thus causing that successor issuer to succeed to the registrant's reporting obligation under Exchange Act Section 13, or if an issuer succeeds, by operation of Exchange Act Rule 15d–5, to the shell company's reporting obligation under Exchange Act Section 15(d), the successor issuer will then succeed to the shell company's obligation to file the required information in a report on Form 8–K. If neither of the events described in the previous sentence occur, the shell company will be obligated to file the required information in a report on Form 8–K. For ease of discussion in this section, we refer to the entity that is obligated to file the required information in a report on Form 8–K as the ''surviving entity.'' In the back door registration context, the surviving entity's securities must meet all of the conditions of Exchange Act Rule 12g–3 for those securities to be deemed registered under the same paragraph of Exchange Act Section 12 under which the shell company's securities were registered. For example, if the number of record holders of the surviving entity's securities is less than 300, the securities of the surviving entity will not succeed automatically by operation of Exchange Act Rule 12g–3 to the reporting status of the shell company's securities. Instead, the surviving entity would be required to file a Form 10 or 10–SB if it wishes to register the securities under Exchange Act Section 12. Similarly, under Exchange Act Rule 15d–5, the surviving entity will be considered the successor issuer by operation of Exchange Act Rule 15d–5 unless the surviving entity is exempt from filing reports or the duty to file reports is suspended under Section 15(d) of the Exchange Act.

[64] In most cases, this will occur when the shell company acquires or is acquired by an operating business. Under the definition of ''shell company'' we are adopting today, it also could occur when the shell company acquires more than nominal assets (other than cash or cash equivalents). Requiring prompt and detailed disclosure in a Form 8–K filing will provide investors in operating businesses newly merged with shell companies with a level of information that is equivalent to the information provided to investors in reporting companies that did not originate as shell companies.

[65] Where an operating company acquires a shell company and the operating company survives the transaction, the operating company will have acquired control of the shell for purposes of the definition of ''succession'' under amended Exchange Act Rule 12b–2. The operating company, as the surviving entity, will be required to file a Form 8–K under Item 5.01. The transaction will constitute a change in control of the shell company whether or not shareholders of the operating company before the transaction control the surviving entity following the transaction.

[66] That Form 8–K need not, however, contain registration-level information if that information previously has been included in an effective registration statement under the Securities Act. In that instance, the Form 8–K could merely reference the Securities Act registration statement that contains the required information. This same principle will apply to information that previously was included in a filing under the Exchange Act. We have amended Form 8–K to make this clear.

[67] As suggested by commenters, we considered imposing a trading ban on the securities of shell companies that have ceased being shell companies and have not filed the required financial statements, with the trading ban imposed until the converted shell company files its audited financial statements. We have not included such a provision in the final rule, as we believe that the information required in the Form 8–K will have the same effect of informing the market before trading and will not present the practical implementation issues that would be presented by a trading ban.

[68] *See* Release No. 33–6578, *Business Combination Transactions; Adoption of Registration Form* (Apr. 23, 1985) [50 FR 18990].

[69] Foreign private issuers generally are not required to file reports on Form 8–K. *See* Exchange Act Rule 13a–11(b) [17 CFR 240.13a–11(b)] and Exchange Act Rule 15d–11(b) [17 CFR 240.15d–11(b)]. Accordingly, we have not extended the requirements of Item 5.06 to foreign private issuers. For a discussion of the reporting requirements of foreign private issuers, see Section II.E., below.

[70] The surviving entity in a transaction where a shell company ceases being a shell company most likely will have to comply with other Items of Form 8–K, as discussed above, in addition to Item 5.06. The registrant could file a single Form 8–K responding to all applicable Items.

business combination transactions among non-shell companies.

We solicited comment as to whether we should take steps to make shell company transactions more easily identifiable. One commenter responded to this request.[71] That commenter supported improved identification of shell company transactions and expressed the view that it would be beneficial to ''establish a mechanism that identifies those reporting companies that fall into the definition of shell company * * *''[72] Because companies other than shell companies may file reports on Form 8–K under Item 2.01 or Item 5.01, we believe that it is appropriate to add an Item requirement to Form 8–K that is specific to shell companies other than business combination related shell companies.

E. Shell Companies That Are Foreign Private Issuers

1. Form S–8

Some foreign private issuers that are registered with the Commission may fall within the definition of shell company that we are adopting today. A shell company that is a foreign private issuer is subject to the new rules regarding the use of Form S–8. We proposed that, as with a domestic shell company, a foreign private issuer shell company would be ineligible to file a registration statement on Form S–8 until 60 days after ceasing to be a shell company and filing the ''Form 10 information'' that the issuer would file if that issuer were registering a class of securities under the Exchange Act. For a foreign private issuer, the proposal defined ''Form 10 information'' to mean the information required by Form 20–F to register the class of securities under the Exchange Act.

We did not receive comments on the proposed amendments to Form S–8 as they relate to foreign private issuers. For purposes of Form S–8, we are adopting the definition of ''Form 10 information,'' when applicable to foreign private issuers, to mean information required by Form 20–F.[73]

2. Exchange Act Reporting of Transactions That Cause a Foreign Private Issuer To Cease Being a Shell Company

Unlike domestic issuers, foreign private issuers that are subject to the periodic reporting requirements under the Exchange Act generally are not required to file current reports on Form 8–K.[74] Instead, these issuers submit material current information on Form 6–K.[75] In the proposing release, we requested comment on alternative approaches with respect to disclosure requirements for foreign private issuer shell companies, including the appropriate form on which they should disclose a transaction with an operating business. We did not receive comments in response to this request.

While we believe that foreign private issuer shell companies should be subject to the disclosure and timing requirements of the rules relating to shell companies, we believe those issuers should report on Form 20–F rather than Form 8–K. Accordingly, we are adopting new Exchange Act Rules 13a–19 and 15d–19. Under these new rules, a foreign private issuer that was a shell company immediately before entering into a transaction that causes it to cease being a shell company must report that transaction on a current basis on Form 20–F.[76] That report must contain the same information that would be required in a registration statement on Form 20–F used to register the classes of the foreign private issuer's securities that are subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, and must be filed within four business days of the completion of the transaction being reported.[77] Because we believe that better identification of shell company transactions is a key element in deterring fraud, we are adding a check box to the cover page of Form 20–F that a foreign private issuer must mark when filing a Form 20–F under Exchange Act Rule 13a–19 or Rule 15d–19.[78] For the same reasons discussed above regarding the application of Item 5.06 of Form 8–K, we are not extending the requirements of Exchange Act Rule 13a–19 or Rule 15d–19 to foreign private issuers that are business combination related shell companies.

Exchange Act Rule 12b–25 permits a foreign private issuer, subject to certain conditions, to extend the due date of its filing of an annual or transition report on Form 20–F.[79] Exchange Act Rule 12b–25 does not provide an extension of the due date for filing a current report on Form 8–K. As the reports on Form 20–F that are to be filed under Exchange Act Rule 13a–19 or Rule 15d–19 are neither annual reports nor transition reports, Exchange Act Rule 12b–25 does not provide an extension of the due date for their filing. Because the reports on Form 20–F that are to be filed under Exchange Act Rule 13a–19 or Rule 15d–19 are more in the nature of a current report, we believe that the extension permitted under Exchange Act Rule 12b–25 should not be available to those Form 20–F reports and we have not added language to Exchange Act Rule 12b–25 to provide such an extension.[80]

Exchange Act Rules 13a–14(a) and 15d–14(a) currently require, among other things, that ''each report'' on Form 20–F must include, as an exhibit, specified certifications of the foreign private issuer's principal executive and principal financial officers. Form 20–F is a multi-function form that may be used as a registration statement or a report. We believe that a Form 20–F required to be filed under new Exchange Act Rule 13a–19 or new Exchange Act Rule 15d–19 is more similar to a registration statement on that Form than a report on that Form, and that the information is being provided on a current basis in a manner similar to that required by Form 8–K. As such, we have added language to Exchange Act Rules 13a–14(a) and 15d–14(a) excluding from the requirements of those paragraphs reports that are filed on Form 20–F under either new Exchange Act Rule 13a–19 or new Exchange Act Rule 15d–19.

F. Shell Company Check Box on Exchange Act Reports

In the proposing release, we asked specifically for comment on whether we should make reports on Form 8–K reporting shell company transactions

[71] *See* letter from North American Securities Administrators Association, Inc.

[72] *See id.*

[73] As with domestic issuers, the amendment to Form S–8 makes clear that this ''Form 10 information'' of the foreign private issuer may be included in any filing with the Commission.

[74] *See* Exchange Act Rules 13a–11(b) and 15d–11(b). A foreign private issuer shell company that engages in a transaction that causes it to lose its status as a foreign private issuer at the same time it ceases to be a shell company would have to comply with the requirements of Form 8-K that are applicable to domestic companies.

[75] 17 CFR 249.306. *See* Exchange Act Rule 13a–16 [17 CFR 240.13a–16] and Exchange Act Rule 15d–16 [17 CFR 240.15d–16].

[76] Foreign private issuers that have elected to report on domestic issuer forms, such as Form 10–K and Form 10–Q, should file the required information on Form 8–K and not Form 20–F.

[77] *See* the discussion in footnotes 18, 63, and 70 regarding the reporting obligation of successor issuers.

[78] As with the periodic report forms for shell companies that are not foreign private issuers, we also have included a check box on the cover of Form 20–F that requires a foreign private issuer to indicate, in any annual report on that form, that it is a shell company. The new check box indicates that it is required where the report on Form 20–F is an ''annual report.'' This requirement would include any transition reports on that Form. In this regard, see the discussion in Section II.F., below.

[79] 17 CFR 240.12b–25.

[80] We have included language in Form 20–F to make clear that Exchange Act Rule 12b–25 does not apply to reports required to be filed on that form under new Exchange Act Rule 13a–19 or new Exchange Act Rule 15d–19.

easier for market participants and regulators to identify. In response to this request, one commenter indicated that rulemaking to accomplish this purpose would be appropriate.[81] That commenter also expressed the view that the cover page of periodic report forms should include a means, such as a check box, by which filers would be required to identify themselves as shell companies.[82] We believe better identification of shell companies and shell company transactions is a key element to deterring fraud. Accordingly, we are adopting amendments to Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, and Form 20–F to add a box on the cover page of those forms that the registrant must mark to indicate whether or not it is a ''shell company.'' [83] The identification of shell company or non-shell company status on the cover page of these forms will constitute required disclosure that is subject to all applicable federal securities laws.

III. Paperwork Reduction Act

The amendments affect Securities Act Form S–8, Form SB–2, Form S–1, and Form F–1 and Exchange Act Form 8–K, Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, and Form 20–F, which contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[84] In the proposing release, we requested comments on the proposed changes to these collection of information requirements,[85] and the Office of Management and Budget (''OMB'') has approved the changes. The titles of the affected collections of information requirements are: Form S–8 (OMB Control No. 3235–0066), Form SB–2 (OMB Control No. 3235–0418), Form S–1 (OMB Control No. 3235–0065), Form F–1 (OMB Control No. 3235–0258), Form 8–K (OMB Control No. 3235–0060), Form 10–Q (OMB Control No. 3235–0070), Form 10–QSB (OMB Control No. 3235–0416), Form 10–K (OMB Control No. 3235–0063), Form 10–KSB (OMB Control No. 3235–0420), and Form 20–F (OMB Control No. 3235–0288). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid control number.

A. Summary of Amendments

We are adopting rules and rule amendments relating to filings by reporting shell companies. Under the new rules, we define a ''shell company'' as a registrant (other than an asset-backed issuer) with no or nominal operations and either no or nominal assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets. We also prohibit the use of Form S–8 by shell companies. We are amending Form 8–K to require a shell company, when reporting an event that causes it to cease being a shell company, to file with the Commission the same type of information that it would be required to file to register a class of securities under the Exchange Act. In addition, we are amending Form 8–K to add new Item 5.06. Item 5.06 will require a registrant that is a shell company (other than a business combination related shell company) to report under that Item when it ceases being a shell company. We are adding new Exchange Act Rules 13a–19 and 15d–19 to require disclosure on Form 20–F when a foreign private issuer that is a shell company (other than a business combination related shell company) completes a transaction that causes it to cease to be a shell company.[86] Finally, we are adding check boxes to the cover pages of Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, and Form 20–F for the registrant to identify itself as a shell company.

These amendments are intended to protect investors by deterring fraud and abuse in our public securities markets through the use of shell companies. Compliance with the amended disclosure requirements is mandatory. There is no mandatory retention period for the information disclosed and responses to the disclosure requirements will not be kept confidential.

B. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the proposing release. Two commenters stated their belief that the proposed amendments would increase costs to shell companies,[87] but a third commenter stated that the proposed amendments to Form 8–K would not increase costs.[88]

One of these commenters indicated that the acceleration of work by legal and accounting professionals would substantially increase costs, but did not clearly explain why acceleration of the work would have this effect.[89] Another commenter expressed the view that the Form 8–K cost burden estimate was too low.[90] This commenter stated that, in its experience, outside counsel performs 75% of the work to complete a Form 8–K report, not the 25% estimate in the proposing release.[91] This commenter estimated that the Form 8–K cost burden would triple but did not believe that the higher cost burden would create an unnecessary obstacle to legitimate transactions.[92] This commenter did not provide evidence to suggest that its estimates would apply to all shell companies. Our estimates of the average number of hours each entity spends completing the affected forms, allocation of burden between outside counsel and internal personnel, and the average hourly rate for outside securities counsel were obtained by contacting a number of law firms and other persons regularly involved in completing the forms. Therefore, we are not modifying the proposed cost burden estimate for Form 8–K.

C. Form S–8

The amendment prohibiting shell companies from using Securities Act Form S–8 will require these companies to use a less streamlined form, such as Form SB–2, Form S–1, or Form F–1 to register offerings that they otherwise might have registered on Form S–8. A company that ceases to be a shell company will be eligible to file a Form S–8 registration statement 60 days after it ceases to be a shell company and files information equivalent to the information that it would be required to file if the company were registering a class of securities under the Exchange Act. In the proposing release, we estimated that this change would reduce the number of Form S–8 registration statements by approximately 5%, and would increase the number of Form SB–2 and Form S–1 registration statements filed by a corresponding amount. We received no comments on these estimates. With respect to Form S–8, we estimate that 50% of the burden of

[81] *See* letter from North American Securities Administrators Association, Inc.

[82] *See id.*

[83] Further, as discussed above, we have added new Item 5.06 to Form 8–K to allow market participants and regulators to identify transactions by shell companies, other than business combination related shell companies.

[84] 44 U.S.C. 3501 *et seq.*

[85] Release No. 33–8407, *Use of Form S–8 and Form 8–K by Shell Companies* (Apr. 15, 2004) [69 FR 21650].

[86] We believe that a foreign private issuer shell company merging with a domestic operating business rarely will be able to keep its foreign private issuer status. We do not expect the number of these transactions to have any quantifiable effect on the estimates included in this section.

[87] *See* letters from L. Stephen Albright and Stoecklein Law Group.

[88] *See* letter from Nathan Garnett.

[89] *See* letter from L. Stephen Albright.

[90] *See* letter from Stoecklein Law Group.

[91] *See id.*

[92] *See id.*

preparing the form is borne by the company's internal staff and that the other 50% represents work performed by outside securities counsel retained by the company at an average rate of $300 per hour. With respect to Form SB–2, Form S–1, and Form F–1, we estimate that 25% of the burden of preparing the form is borne by the company's internal staff and that 75% of the burden represents work performed by outside securities counsel at the rate of $300 per hour.

We do not expect that shell companies that are prohibited from using Form S–8 are likely to register securities that they otherwise would have registered on Form S–8 on a registration form that does not become effective automatically and requires the filing of substantially more complete information. However, shell companies that wish to register offerings of their securities under the Securities Act could instead file on Form SB–2, Form S–1, or Form F–1. We estimate that a maximum of 5% of the number of Form S–8 registration statements filed in our fiscal year 2004 (4,000 × .05 = 200 filings) will be filed on Form SB–2, Form S–1, or Form F–1 instead. We also expect 95% of these 200 filings by shell companies that choose to file another registration statement in lieu of Form S–8 will use Form SB–2, thereby increasing the number of Form SB–2 filings by 190 (200 filings × .95). We further estimate that the number of Form S–1 registration statements will increase by 8 (200 filings × .04). We estimate that the number of Form F–1 registration statements will increase by 2 (200 filings × .01). As a result, we estimate that the Form S–8 reporting burden will decrease by 2,400 hours (200 filings × 24 hours per filing × .50) and the annual cost will decrease by $720,000 (200 filings × 24 hours per filing × $300 per hour × .50). The Form SB–2 reporting burden will increase by 28,168 hours (190 filings × 593 hours per filing × .25), with an annual cost increase of $25,350,750 (190 filings × 593 hours per filing × $300 per hour × .75). We estimate that the Form S–1 reporting burden will increase by 2,204 hours (8 filings × 1,102 hours per filing × .25) with an annual cost increase of $1,983,600 (8 filings × 1,102 hours per filing × $300 per hour × .75). Finally, we estimate that the Form F–1 reporting burden will increase by 905 hours (2 filings × 1,809 hours per filing × .25) with an annual cost increase of $814,050 (2 filings × 1,809 hours per filing × $300 per hour × .75).

D. Form 8–K

Form 8–K prescribes information about important corporate events that a company must disclose on a current basis. Form 8–K also may be used, at a company's option, to report any event that the company deems to be of importance to its shareholders.

We currently estimate that Form 8–K results in a total annual compliance burden of 311,565 hours and an annual cost of $31,156,500. We estimate the number of Form 8–K filers to be approximately 12,000, based on the actual number of Form 10–K and Form 10–KSB filers during the Commission's 2004 fiscal year. For purposes of this analysis, we estimate that the number of reports on Form 8–K filed annually is 83,084. We estimate that each entity currently spends, on average, approximately five hours to complete Form 8–K. We estimate that 75% of the burden is borne by the company and that 25% of the burden is borne by outside securities counsel retained by the company at an average cost of $300 per hour.

We are amending Form 8–K to add Item 5.06, which will require a registrant that is a shell company (other than a business combination related shell company) that engages in a transaction that changes its status as a shell company to file a report on Form 8–K. As noted below, we estimate that 94 of these transactions occurred in fiscal year 2004. All of these 94 transactions would be required to be reported pursuant to Item 5.06 of Form 8–K. Because each of these transactions already would have been required to be reported on Form 8–K pursuant to Item 2.01 or Item 5.01 of that Form, we do not believe that Item 5.06 will add additional burdens or costs.

Under the revisions to Item 2.01 and Item 5.01 of Form 8–K that we are adopting today, a shell company will be required to make a more specific and detailed filing on Form 8–K when it reports a transaction that causes it to cease being a shell company. Specifically, the shell company will need to file a Form 8–K that contains the information that would be required in an initial registration statement on Form 10 or Form 10–SB to register a class of securities under Section 12 of the Exchange Act. The company will be required to file the Form 8–K within four business days after the closing of the transaction. This amendment will eliminate the 71-day window during which financial information required to be included in the report can be filed by a shell company currently.

The amendments to Item 2.01 and Item 5.01 will increase the amount of information that a former shell company must include in the form, but not the number of filings. In our fiscal year 2004, companies that categorized themselves as ''blank check companies'' using the relevant SEC Standard Industrial Classification (SIC) Code disclosed 31 transactions under Item 2.01 of Form 8–K. We also have identified 63 back door registration filings during fiscal year 2004 that would be required to be filed on an expanded Form 8–K under the new requirements. We believe the combined total of 94 of these filings is a proper estimate of the total number of Item 2.01 and Item 5.01 filings and have used that number of filings for purposes of this analysis.

We believe that the additional information we are requiring shell companies to include in a Form 8–K filed under Item 2.01 or Item 5.01 of Form 8–K is analogous to information required by Form 10–SB because the substantial majority of shell companies will be small business issuers. Currently, we estimate that it takes 133 hours to complete a Form 10–SB. Therefore, we estimate that it will take a shell company 133 hours to prepare the information that we are requiring the company to provide in a Form 8–K report when it reports a transaction that causes it to cease being a shell company. We estimate that the company will bear 75% of the burden and that 25% of the burden will be borne by outside securities counsel retained by the company at an average rate of $300 per hour. We estimate that the burden in this type of Form 8–K filing will increase by 12,502 hours (133 hours per filing × 94 required filings). Therefore, the annual Form 8–K reporting burden will increase by 9,377 hours (12,502 total hours × .75) and the annual cost burden will increase by approximately $937,650 (12,502 total hours × $300 per hour × .25).

We are adopting several modifications to our proposals, but none of these affects our burden estimates associated with the amendments. One modification is that a registrant will be required to check a box on its Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, or Form 20–F indicating whether or not it is a shell company as defined in Rule 12b–2 under the Exchange Act. We believe that this and other changes that we have made to the proposals do not affect the total amount of burden hours or costs imposed by the forms.

E. Form 20–F

The amendments to Form 20–F require a foreign private issuer that is a shell company to file a report on Form 20–F after completion of a transaction that causes it to cease being a shell company. The Form 20–F is a multi-function form used by foreign private issuers.

We estimate that there were 1,240 foreign private issuers that were registered and reporting with the Commission as of December 31, 2004.[93] We estimate that each entity currently spends, on average, approximately 2,615 hours to complete Form 20–F (3,242,600 total hours / 1,240 filings = 2,615 hours per filing). We estimate that 25% of the burden is borne by the company and that 75% of the burden is borne by outside securities counsel retained by the company at an average cost of $300 per hour.

We estimate that Form 20–F results in a total annual compliance burden of 810,650 hours (2,615 hours per filing × 1,240 filings × .25) and an annual cost of $729,585,000 (2,615 hours × 1,240 filings × $300 × .75%). As we discuss above, we have estimated that there will be 94 shell company transactions reported annually on Form 8–K. As approximately 10% of reporting companies are foreign private issuers, we estimate that foreign private issuer shell companies will file 10 reports on Form 20–F (94 filings × .10). As a result, we estimate that the Form 20–F reporting burden will increase by 6,538 hours (10 filings × 2,615 hours per filing × .25), with an annual cost increase of $5,883,750 (10 filings × 2,615 hours per filing × $300 per hour × .75).[94]

IV. Costs and Benefits

Today's amendments are intended to protect investors by deterring fraud and abuse in our securities markets through the use of reporting shell companies. However, we are sensitive to the costs and benefits that result from our rules. In this section, we examine the costs and benefits of the amendments.

A. Form S–8

1. Costs of Form S–8 Amendments

A shell company no longer will be eligible to use Form S–8 to register offerings of securities in connection with employee benefit plans. We believe it generally is inconsistent with shell company status to have a legitimate use for employee benefit plans. However, where such a plan exists, a shell company will continue to be eligible to use Form SB–2, Form S–1, or Form F–1 to offer securities in connection with an employee benefit plan. A shell company also may be entitled to rely on certain exemptions from the registration requirements of the Securities Act. Thus, shell companies will continue to be able to offer securities under employee benefit plans. They cannot, however, take advantage of Form S–8, which is a streamlined registration statement form with automatic effectiveness. Moreover, the securities that are offered and sold in reliance on an exemption from Securities Act registration may be subject to restrictions on resale. This may impose costs on shell companies that are difficult to quantify.

We estimate that the cost of shell companies no longer being eligible to use Form S–8 in connection with employee benefit plans is the difference between the cost of 200 Form S–8 filings and the cost of filing those 200 registration statements on Form SB–2, Form S–1, or Form F–1. Based on the estimates presented above, these amounts are:

- Cost of increasing the number of Form SB–2 filings by 190 = $30,280,063;[95] plus
- Cost of increasing the number of Form S–1 filings by 8 = $2,369,300[96] plus
- Cost of increasing the number of Form F–1 filings by 2 = $972,338[97] minus
- Decreased cost from decreasing the number of Form S–8 filings by 200 = $1,140,000[98] equals
- Total cost of amendments to Form S–8 = $32,481,701

2. Benefits of Form S–8 Amendments

Shell companies often have used offerings registered on Form S–8 for fraudulent and manipulative purposes. These amendments disqualify shell companies from using Form S–8. The amendments also require a shell company (other than a business combination related shell company) that ceases to be a shell company to wait 60 days after it ceases to be a shell company and files information that is equivalent to the information contained in an Exchange Act registration statement before it becomes eligible to use Form S–8. This amendment will make it more difficult for shell companies to use Form S–8 for fraudulent purposes, and is consistent with the full disclosure purpose of the federal securities laws.

B. Form 8–K

1. Costs of Form 8–K Amendments

a. New Item 5.06 of Form 8–K

We are amending Form 8–K to add Item 5.06, which will require a registrant that is a shell company (other than a business combination related shell company) that engages in a transaction that changes its status as a shell company to file a report on Form 8–K. As noted above, we estimate that 94 of these transactions occurred in fiscal year 2004. All of these 94 transactions would be required to be reported pursuant to Item 5.06 of Form 8–K. Because each of these transactions already would have been required to be reported on Form 8–K pursuant to Item 2.01 or Item 5.01 of that Form, we do not believe that Item 5.06 will add measurable additional costs.

b. Revised Items 2.01 and 5.01 of Form 8–K

We are revising Item 2.01 and Item 5.01 of Form 8–K. Under these revisions, a shell company will be required to make a more specific and

[93] *See* SEC Web site at *http://www.sec.gov/divisions/corpfin/internatl/companies.shtml.*

[94] The estimate of 2,615 hours per filing for Form 20–F reflects the fact that the form is used by foreign private issuers, regardless of the size of the issuer. In estimating the increased annual burden and cost, we have continued to use this estimate of 2,615 hours per filing, even though it is likely an overstatement of the time necessary for a shell company to complete the form, because we do not have a better estimate of the amount of time a smaller, less complex foreign private issuer would require to complete the form.

[95] We have estimated the company's internal costs at $175 per hour. Accordingly, we have calculated the cost of the increased burden that is borne by the registrant by multiplying the total number of hours for the 190 filings (190 filings × 593 hours per filing × $175 per hour × .25 = $4,929,313). We have then added this amount to the $25,350,750 cost to the company (190 filings × 593 hours per filing × $300 × .75).

[96] We have estimated the company's internal costs at $175 per hour. Accordingly, we have calculated the cost of the increased burden that is borne by the registrant by multiplying the total number of hours for the 8 filings (8 filings × 1,102 hours per filing × $175 per hour × .25 = $385,700). We have then added this amount to the $1,983,600 cost to the company (8 filings × 1,102 hours per filing × $300 × .75).

[97] We have estimated the company's internal costs at $175 per hour. Accordingly, we have calculated the cost of the increased burden that is borne by the registrant by multiplying the total number of hours for the 2 filings (2 filings × 1,809 hours per filing × $175 per hour × .25 = $158,288). We have then added this amount to the $814,050 cost to the company (2 filings × 1,809 hours per filing × $300 × .75).

[98] We have estimated the company's internal costs at $175 per hour. Accordingly, we have calculated the cost of the decreased burden that is borne by the registrant by multiplying the total number of hours for the 200 filings (200 filings × 24 hours per filing × $175 per hour × .50 = $420,000). We have then added this amount to the $720,000 decreased cost to the company (200 filings × 24 hours per filing × $300 × .50).

detailed filing on Form 8–K when it reports a transaction that causes it to cease being a shell company. Specifically, the shell company will need to file a Form 8–K that contains the information that would be required in an initial registration statement on Form 10 or Form 10–SB to register a class of securities under Section 12 of the Exchange Act. The company will be required to file the Form 8–K within four business days after the closing of the transaction. This amendment also will eliminate the current 71-day window during which the financial information can be filed by a shell company that is filing a report on Form 8–K pursuant to Item 2.01.[99]

The amendments to Item 2.01 and Item 5.01 will increase the amount of information that a former shell company must include in the form but not the number of filings. As discussed above, we have estimated that there will be 94 filings subject to these new requirements.

We believe that the additional information we are requiring shell companies to include in a Form 8–K filed under Item 2.01 or Item 5.01 of Form 8–K is analogous to information required by Form 10–SB. Currently, we estimate that it takes 133 hours to complete a Form 10–SB. Therefore, we estimate that it will take a shell company 133 hours to prepare the information that we are requiring the company to provide in a Form 8–K report when it reports a transaction that causes it to cease being a shell company. We estimate that the company will bear 75% of the burden at an average rate of $175 per hour and that 25% of the burden will be borne by outside securities counsel retained by the company at an average rate of $300 per hour. Therefore, the annual Form 8–K reporting burden being borne by the company will result in an increased annual cost for Form 8–K of $1,640,975.[100] As estimated previously, the revisions to Item 2.01 and Item 5.01 will result in an annual increased cost for Form 8–K of $937,650 (12,502 total hours × $300 per hour × .25). We have combined these amounts to determine that the annual increased cost of the requirements in revised Item 2.01 and Item 5.01 will be $2,578,625 ($1,640,975 + $937,650).

2. Benefits of Form 8–K Amendments

The benefit of the Form 8–K amendments is more timely and enhanced disclosure for the protection of investors and increased integrity of the securities markets, especially the markets for securities of smaller companies. The Form 8–K amendments are based on the premise that federal securities regulation should promote full disclosure. The more timely and enhanced disclosure in Form 8–K filings is designed to provide investors in operating businesses that are newly merged with shell companies with a level of information that is equivalent to the information provided to investors in reporting companies that register rather than reaching a similar result through a transaction with a shell company. The filing of this Form 8–K report is intended to decrease the opportunity to engage in fraudulent and manipulative activity.

C. Form 20–F

1. Costs of Form 20–F Amendment

We estimate that 1,240 foreign private issuers were registered and filing reports with the Commission as of December 31, 2004.[101] The amendments to Form 20–F require a foreign private issuer that is a shell company (other than a business combination related shell company) to file a report on Form 20–F after completion of a business combination with a formerly private operating business. While we do not believe it is likely that any foreign private issuers that are shell companies would file a Form 20–F to register securities, it is possible. As discussed above, we have estimated that there will be 94 shell company transactions reported on Form 8–K. As approximately 10% of reporting companies are foreign private issuers, we estimate that foreign private issuer shell companies will file 10 reports on Form 20–F as a result of the new requirements (94 filings × .10).

As discussed above, we estimate that each entity currently spends, on average, approximately 2,615 hours to complete a Form 20–F.[102] We estimate that the company will bear 75% of the burden at an average rate of $175 per hour and that 25% of the burden will be borne by outside securities counsel retained by the company at an average rate of $300 per hour. Therefore, the annual Form 20–F reporting burden being borne by the company will result in an increased annual cost for Form 20–F of $1,144,150.[103] As estimated previously, the revisions to Form 20–F will result in an annual increased cost of $5,883,750 (2,615 hours per filing × 10 filings × $300 per hour × .75). We have combined these amounts to determine that the annual increased cost of the revisions to Form 20–F will be $7,027,900 ($1,144,150 + $5,883,750).

2. Benefits of Form 20–F Amendments

Some foreign private issuers that are registered with the Commission may fall within the definition of ''shell company.'' We have decided to subject foreign private issuer shell companies to essentially the same requirements as are applied to domestic shell companies for the same reasons discussed above. The benefit of this amendment is more timely and enhanced disclosure for the protection of investors.

V. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[104] requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. Exchange Act Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act[105] and Section 3(f) of the Exchange Act[106] require us, when we are engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the

[99] Because this revision will affect only the timing of filing and not the amount of financial information required to be filed, we do not estimate any additional costs as a result of the elimination of the 71-day window.

[100] We calculated this amount in the following manner. First, we estimated that there would be a total annual increase in the Form 8–K burden of 12,502 hours (133 hours per filing × 94 filings). We estimated that 75% of this annual increase in the Form 8–K burden would be borne by the company. This portion of the increased burden equals 9,377 hours (12,502 total hours × .75). We multiplied this amount by $175 per hour to arrive at the annual increased cost of $1,640,975 (9,377 hours × $175 per hour).

[101] See SEC web site at *http://www.sec.gov/divisions/corpfin/internatl/companies.shtml*.

[102] The estimate of 2,615 hours per filing for Form 20–F reflects the fact that the form is used by foreign private issuers, regardless of the size of the issuer. In estimating the increased annual burden and cost, we have continued to use this estimate of 2,615 hours per filing, even though it is likely an overstatement of the time necessary for a shell company to complete the form, because we do not have a better estimate of the amount of time a smaller, less complex foreign private issuer would require to complete the form.

[103] We calculated this amount in the following manner. First, we estimated that there would be a total annual increase in the Form 20–F burden of 26,150 hours (2,615 filings × 10 filings). We estimated that 25% of this annual increase in the Form 20–F burden would be borne by the company. This portion of the increased burden equals 6,538 hours (26,150 total hours × .25). We multiplied this amount by $175 per hour to arrive at the annual increased cost of $1,144,150 (6,538 hours × $175 per hour).

[104] 15 U.S.C. 78w(a)(2).

[105] 15 U.S.C 77b(b).

[106] 15 U.S.C. 78c(f).

action will promote efficiency, competition, and capital formation.

The purpose of these amendments is to deter fraud and reduce abuse of Form S–8 in shell company transactions and to enhance our reporting requirements on Form 8–K (and Form 20–F with respect to foreign private issuers) with respect to transactions involving shell companies. We anticipate that these amendments will improve the proper functioning of the capital markets. We believe the amendments will enhance investor confidence in the securities markets and promote efficiency and capital formation. We do not expect the amendments to have any anti-competitive effects.

We solicited comment on these matters in the proposing release. We received no comments on whether the adoption of the proposals would have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Securities Act or the Exchange Act. We also did not receive any comments on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act.[107] This FRFA involves amendments to Form S–8 under the Securities Act, Form 8–K, Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, and Form 20–F under the Exchange Act, Rule 405 under the Securities Act and Rule 12b–2, Rule 13a–14, and Rule 15d–14 under the Exchange Act, as well as new Rule 13a–19 and Rule 15d–19 under the Exchange Act. The amendments will prohibit the use of Form S–8 by shell companies and require a shell company that is reporting an event that causes it to cease being a shell company to disclose the same type of information that it would be required to provide in registering a class of securities under the Exchange Act. The amendments also will define ''shell company.'' An Initial Regulatory Flexibility Analysis was prepared in accordance with the Regulatory Flexibility Act[108] in conjunction with the proposing release. The proposing release included the IRFA and solicited comments on it.

[107] 5 U.S.C. 604.

[108] 5 U.S.C. 603.

A. Reasons for and Objectives of the Amendments

The purpose of the amendments is to protect investors in shell companies and to deter fraud and abuse in our public securities markets through the use of shell companies.

B. Significant Issues Raised by Public Comment

The IRFA appeared in the proposing release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposed amendments to Form S–8 and Form 8–K, and whether these amendments would increase the reporting, record keeping and other compliance requirements for small businesses. We did not receive any comments responding to this request.

C. Small Entities Subject to the Amendments

The amendments will affect companies that are small entities. Exchange Act Rule 0–10(a)[109] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 issuers, other than investment companies, that would be considered small entities as of the end of fiscal year 2004. The amendments will prohibit the use of Securities Act Form S–8 by shell companies and require shell companies to have specific and detailed information on file before being permitted to use Form S–8 when they become an operating business and cease being a shell company. We believe that only a small percentage of the 2,500 issuers that are small entities are shell companies. The amendments will affect only shell companies. Because a shell company may have significant assets consisting of cash and cash equivalents, it is not certain that all shell companies will be ''small entities.''

D. Reporting, Record Keeping, and Other Compliance Requirements

The amendments impose additional disclosure requirements on shell companies by requiring them to provide additional business disclosure on Form 8–K in addition to currently required financial information. The amendments also require a company to report on Form 8–K when it becomes a shell company or when it ceases being a shell company (other than a business combination related shell company). Other than the additional disclosure requirements, the primary impact of the Form 8–K amendments relates to the timing of the filing. The amendments require foreign private issuers that are shell companies (other than business combination related shell companies) to file reports on Form 20–F that are substantially similar to the reports on Form 8–K required by shell companies that are not foreign private issuers. The amendments also require shell companies to mark check boxes on the cover sheet on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, and Form 20–F. No other new reporting, record keeping or compliance requirements are imposed. The amendments prohibit shell companies from using Form S–8.

[109] 17 CFR 240.0–10(a).

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small businesses. In connection with the proposal, we considered the following alternatives:

(1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) Clarification, consolidation, or simplification of compliance and reporting requirements for such small entities;

(3) Use of performance rather than design standards; and

(4) An exemption from coverage of the amendments, or any part thereof, for small entities.

With respect to Alternative (1), the amendment to Form S–8 will prohibit shell companies from using the form. The amendments to Form 8–K will shorten the time within which shell companies must file their required financial disclosures from 71 calendar days after the initial Form 8–K filing to four business days after completion of the transaction that causes them to cease being shell companies. It would be inappropriate to establish a more liberal compliance standard for small businesses given that the current standard applies to all public companies; it is the current delay in the filing of the required financial statements that permits and facilitates abuse by shell companies. The amendments will increase costs only to shell companies, not to all small entities, by requiring former shell companies, upon making a significant acquisition, to file a Form 8–K containing the information that would be required in an initial registration statement on Form 10 or Form 10–SB to register a class of its securities under Section 12 of the Exchange Act.

Most shell companies also will have to wait at least 60 days after ceasing to be a shell company and filing required information before using Form S–8 to register securities. Form S–8 is a registration statement used for employee benefit plans, and shell companies typically have few, if any, employees. Accordingly, the amendment does not impose any inappropriate burdens on small entities.

With regard to Alternative (2), the amendments are clear and concise. Prohibiting the use of Form S–8 by shell companies does not increase the disclosure required unless a shell company wants to offer employees securities pursuant to an employee benefit plan. If the shell company has employees and wants to offer them securities under an employee benefit plan, it will have to comply with the substantially increased disclosure requirements of Form SB–2, Form S–1, or Form F–1. We believe that most shell companies, given the limitations in the definition of shell company on operations and assets, will not need to offer securities to employees pursuant to employee benefit plans. The amendment to Form S–8 requires most former shell companies to wait 60 days after ceasing to be a shell company and filing the required disclosure before becoming eligible to use Form S–8. During this 60-day period, the markets can absorb disclosure that has been provided by the newly merged operating company. This disclosure is comparable to that required of other reporting companies, including ''small entities.'' The amendment to Form 8–K requiring the filing of additional information within four business days increases the amount of disclosure required and accelerates the deadline for filing certain of this disclosure. We require certain information, which was not specifically required previously by Form 8–K, to be included for shell companies.

Alternatives (3) and (4) are not appropriate because the purpose of the amendments is to deter fraud. It would be difficult under Alternative (3) to design performance standards that would fulfill the Commission's statutory mandate to ensure adequate disclosure about shell companies and subsequent business combinations in a prompt manner. Alternative (4) is inappropriate because it is likely that a substantial percentage of shell companies will be small entities. We note again that these amendments apply only to shell companies, which constitute only a small percentage of the total number of small entities. An exemption for small entities would not achieve the desired result.

VII. Statutory Basis and Text

The amendments are being adopted pursuant to Sections 6, 7, 8, 10, 19, and 28 of the Securities Act, Sections 3, 10, 12, 13, 15, and 23 of the Exchange Act, and Sections 3(a) and 302 of the Sarbanes-Oxley Act of 2002.

List of Subjects in 17 CFR Parts 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of Amendments

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Amend § 230.405 by adding the following definitions of *Business combination related shell company* and *Shell company* in alphabetical order to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Business combination related shell company: The term *business combination related shell company* means a shell company (as defined in § 230.405) that is:

(1) Formed by an entity that is not a shell company solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(2) Formed by an entity that is not a shell company solely for the purpose of completing a business combination transaction (as defined in § 230.165(f)) among one or more entities other than the shell company, none of which is a shell company.

* * * * *

Shell company: The term *shell company* means a registrant, other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(1) No or nominal operations; and

(2) Either:

(i) No or nominal assets;

(ii) Assets consisting solely of cash and cash equivalents; or

(iii) Assets consisting of any amount of cash and cash equivalents and nominal other assets.

Note: For purposes of this definition, the determination of a registrant's assets (including cash and cash equivalents) is based solely on the amount of assets that would be reflected on the registrant's balance sheet prepared in accordance with generally accepted accounting principles on the date of that determination.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 3. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 4. Amend § 239.16b by revising the introductory text of paragraph (a) to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

(a) Any registrant that, immediately prior to the time of filing a registration statement on this form, is subject to the requirement to file reports pursuant to section 13 (15 U.S.C. 78m) or 15(d) (15 U.S.C. 78o(d)) of the Securities Exchange Act of 1934; has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials); is not a shell company (as defined in § 230.405 of this chapter) and has not been a shell company for at least 60 calendar days previously (subject to Instruction A.1.(a)(7) to Form S–8); and if it has been a shell company at any time previously, has filed current Form 10 information (as defined in Instruction A.1.(a)(6) to Form S–8) with the Commission at least 60 calendar days previously reflecting its status as an entity that is not a shell company (subject to Instruction A.1.(a)(7) to Form S–8), may use this form for registration under the Securities Act of 1933 (the Act) (15 U.S.C. 77a *et seq.*) of the following securities:

* * * * *

■ 5. Amend Form S–8 (referenced in § 239.16b) by revising the introductory text to General Instruction A.1. and adding paragraphs (a)(6) and (a)(7) to General Instruction A.1., to read as follows:

Note —The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

A. Rule as to Use of Form S–8

1. Any registrant that, immediately prior to the time of filing a registration statement on this Form, is subject to the requirement to file reports pursuant to Section 13 (15 U.S.C. 78m) or 15(d) (15 U.S.C. 78o(d)) of the Securities Exchange Act of 1934 (''Exchange Act''); has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials); is not a shell company (as defined in § 230.405 of this chapter) and has not been a shell company for at least 60 calendar days previously (subject to the exception in paragraph (a)(7) of this Instruction A.1.); and if it has been a shell company at any time previously, has filed current Form 10 information with the Commission at least 60 calendar days previously reflecting its status as an entity that is not a shell company (subject to the exception in paragraph (a)(7) of this Instruction A.1.), may use this Form for registration under the Securities Act of 1933 (''Act'') (15 U.S.C. 77a *et seq.*) of the following securities:

(a) * * *

(6) The term ''Form 10 information'' means the information that is required by Form 10, Form 10–SB, or Form 20–F (§ 249.210, § 249.210b, or § 249.220f of this chapter), as applicable to the registrant, to register under the Securities Exchange Act of 1934 each class of securities being registered using this form. A registrant may provide the Form 10 information in another Commission filing with respect to the registrant.

(7) Notwithstanding the last two clauses of the first paragraph of this Instruction A.1., a business combination related shell company may use this form immediately after it:

(i) Ceases to be a shell company; and

(ii) Files current Form 10 information with the Commission reflecting its status as an entity that is not a shell company.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 7. Amend § 240.12b–2 by adding the following definitions of *Business combination related shell company* and *Shell company* in alphabetical order and revising the definition of *Succession* to read as follows:

§ 240.12b–2 Definitions.

* * * * *

Business combination related shell company: The term *business combination related shell company* means a shell company (as defined in § 240.12b–2) that is:

(1) Formed by an entity that is not a shell company solely for the purpose of changing the corporate domicile of that entity solely within the United States; or

(2) Formed by an entity that is not a shell company solely for the purpose of completing a business combination transaction (as defined in § 230.165(f) of this chapter) among one or more entities other than the shell company, none of which is a shell company.

* * * * *

Shell company: The term *shell company* means a registrant, other than an asset-backed issuer as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(1) No or nominal operations; and

(2) Either:

(i) No or nominal assets;

(ii) Assets consisting solely of cash and cash equivalents; or

(iii) Assets consisting of any amount of cash and cash equivalents and nominal other assets.

Note: For purposes of this definition, the determination of a registrant's assets (including cash and cash equivalents) is based solely on the amount of assets that would be reflected on the registrant's balance sheet prepared in accordance with generally accepted accounting principles on the date of that determination.

* * * * *

Succession: The term *succession* means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer; or the acquisition of control of a shell company in a transaction required to be reported on Form 8–K (§ 249.308 of this chapter) in compliance with Item 5.01 of that Form or on Form 20–F (§ 249.220f of this chapter) in compliance with Rule 13a–19 (§ 240.13a–19) or Rule 15d–19 (§ 240.15d–19). Except for an acquisition of control of a shell company, the term does not include the acquisition of control of a business unless followed by the direct acquisition of its assets. The terms *succeed* and *successor* have meanings correlative to the foregoing.

* * * * *

§ 240.13a–14 [Amended]

■ 8. Amend § 240.13a–14, paragraph (a), to revise the text ''§ 229.1101 of this chapter), must include certifications'' to read ''§ 229.1101 of this chapter) or a report on Form 20–F filed under § 240.13a–19, must include certifications''.

■ 9. Add § 240.13a–19 to read as follows:

§ 240.13a–19 Reports by shell companies on Form 20–F.

Every foreign private issuer that was a shell company, other than a business combination related shell company, immediately before a transaction that causes it to cease to be a shell company shall, within four business days of completion of that transaction, file a report on Form 20–F (§ 249.220f of this chapter) containing the information that would be required if the issuer were filing a form for registration of securities on Form 20–F to register under the Act all classes of the issuer's securities subject to the reporting requirements of section 13 (15 U.S.C. 78m) or section 15(d) (15 U.S.C. 78o(d)) of the Act upon consummation of the transaction, with such information reflecting the registrant and its securities upon consummation of the transaction.

§ 240.15d–14 [Amended]

■ 10. Amend § 240.15d–14, paragraph (a), to revise the text ''§ 229.1101 of this chapter), must include certifications'' to read ''§ 229.1101 of this chapter) or a report on Form 20–F filed under § 240.15d–19, must include certifications''.

■ 11. Add § 240.15d–19 to read as follows:

§ 240.15d–19 Reports by shell companies on Form 20–F.

Every foreign private issuer that was a shell company, other than a business combination related shell company, immediately before a transaction that causes it to cease to be a shell company shall, within four business days of completion of that transaction, file a report on Form 20–F (§ 249.220f of this chapter) containing the information that would be required if the issuer were filing a form for registration of securities on Form 20–F to register under the Act all classes of the issuer's securities subject to the reporting requirements of section 13 (15 U.S.C. 78m) or section 15(d) (15 U.S.C. 78o(d)) of the Act upon consummation of the transaction, with such information reflecting the registrant and its securities upon consummation of the transaction.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 12. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 13. Amend § 249.220f by:

■ a. Revising the section heading; and

■ b. Revising in paragraph (a) the text ''(15 U.S.C. 77a *et seq.*) or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)).'' to read ''(15 U.S.C. 78a *et seq.*), as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)), or as a shell company report required under Rule 13a–19 or Rule 15d–19 under the Exchange Act (§ 240.13a–19 or 240.15d–19 of this chapter).''

The revision reads as follows:

§ 249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g), annual and transition reports pursuant to sections 13 and 15(d), and shell company reports required under Rule 13a–19 or 15d–19 (§ 240.13a–19 or § 240.15d–19 of this chapter).

* * * * *

■ 14. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Adding a check box on the cover page preceding the text ''Commission file number'';

■ b. Adding a check box on the cover page preceding the text that begins ''(APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS * * *'');

■ c. Adding paragraph (d) to General Instruction A.;

■ d. Designating the existing Instruction to Item 4.A.4 as ''1''; and

■ e. Adding Instruction 2 to Item 4.A.4.

The additions and revision read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 20–F

* * * * *

OR

☐ Shell Company Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of event requiring this shell company report

* * * * *

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b–2 of the Exchange Act). ☐ Yes ☐ No

* * * * *

GENERAL INSTRUCTIONS

A. Who May Use Form 20–F and When It Must be Filed.

* * * * *

(d) A foreign private issuer that was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), immediately before a transaction that causes it to cease to be a shell company must file a report on this form in accordance with the requirements set forth in Rule 13a–19 or Rule 15d–19 under the Exchange Act (17 CFR 240.13a–19 and 240.15d–19). Issuers filing such reports shall provide all information required in, and follow all instructions of, Form 20–F relating to an Exchange Act registration statement of all classes of the registrant's securities subject to the reporting requirements of Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the transaction, with such information reflecting the registrant and its securities upon consummation of the transaction. Rule 12b–25 under the Exchange Act (17 CFR 240.12b–25) is not available to extend the due date of the report required under this subparagraph (d).

* * * * *

Instructions to Item 4.A.4:

1. * * *

2. If you are filing a report under Rule 13a–19 or Rule 15d–19 under the Exchange Act (17 CFR 240.13a–19 or 240.15d–19), you must disclose the material terms of the transaction as a result of which you ceased to be a shell company and you should file as an exhibit under Item 4(a) of the Exhibits to Form 20–F any contracts relating to the transaction.

* * * * *

■ 15. Amend Form 8–K (referenced in § 249.308) under the caption ''Information to Be Included in the Report'' by:

■ a. Removing the word ''and'' at the end of Item 2.01(d);

■ b. Removing the period at the end of Item 2.01(e)(2) and in its place adding ''; and'';

■ c. Adding paragraph (f) to Item 2.01;

■ d. Removing the word ''and'' at the end of Item 5.01(a)(6);

■ e. Removing the period at the end of Item 5.01(a)(7) and in its place adding ''; and'';

■ f. Adding paragraph (a)(8) to Item 5.01;

■ g. Adding Item 5.06;

■ h. Redesignating paragraph (c) of Item 9.01 as paragraph (d); and

■ i. Adding new paragraph (c) to Item 9.01.

The additions read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 8–K CURRENT REPORT

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 2.01 Completion of Acquisition or Disposition of Assets

* * * * *

(f) If the registrant was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), immediately before the transaction, the information that would be required if the registrant were filing a general form for registration of securities on Form 10 or Form 10–SB (17 CFR 249.210 or 17 CFR 249.210b), as applicable, under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the transaction, with such information reflecting the registrant and its securities upon consummation of the transaction. Notwithstanding General Instruction B.3. to Form 8–K, if any disclosure required by this Item 2.01(f) is previously reported, as that term is defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

* * * * *

Item 5.01 Changes in Control of Registrant

(a) * * *

(8) if the registrant was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), immediately before the change in control, the information that would be required if the registrant were filing a general form for registration of securities on Form 10 or Form 10–SB (17 CFR 249.210 or 17 CFR 249.210b), as applicable, under the Exchange Act reflecting all classes of the registrant's securities subject to the reporting requirements of Section 13 (15 U.S.C. 78m) or Section 15(d) (15 U.S.C. 78o(d)) of such Act upon consummation of the change in control, with such information reflecting the registrant and its securities upon consummation of the transaction. Notwithstanding General Instruction B.3. to Form 8–K, if any disclosure required by this Item 5.01(a)(8) is previously reported, as that term is defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

* * * * *

Item 5.06 Change in Shell Company Status

If a registrant that was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), has completed a transaction that has the effect of causing it to cease being a shell company, as defined in Rule 12b–2, disclose the material terms of the transaction. Notwithstanding General Instruction B.3. to Form 8–K, if any disclosure required by this Item 5.06 is previously reported, as that term is defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in this report.

* * * * *

Item 9.01 Financial Statements and Exhibits

* * * * *

(c) *Shell company transactions.* The provisions of paragraph (a)(4) and (b)(2) of this Item shall not apply to the financial statements or *pro forma* financial information required to be filed under this Item with regard to any transaction required to be described in answer to Item 2.01 of this Form by a registrant that was a shell company, other than a business combination related shell company, as those terms are defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), immediately before that transaction. Accordingly, with regard to any transaction required to be described in answer to Item 2.01 of this Form by a registrant that was a shell company, other than a business combination related shell company, immediately before that transaction, the financial statements and *pro forma* financial information required by this Item must be filed in the initial report. Notwithstanding General Instruction B.3. to Form 8–K, if any financial statement or any financial information required to be filed in the initial report by this Item 9.01(c) is previously reported, as that term is defined in Rule 12b–2 under the Exchange Act (17 CFR 240.12b–2), the registrant may identify the filing in which that disclosure is included instead of including that disclosure in the initial report.

* * * * *

■ 16. Amend Form 10–Q (referenced in § 249.308a) by adding a check box on the cover page preceding the text that begins ''APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS * * *,'' to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–Q

* * * * *

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b–2 of the Exchange Act).

☐ Yes ☐ No

* * * * *

■ 17. Amend Form 10–QSB (referenced in § 249.308b) by adding a check box on the cover page preceding the text that begins APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS * * *,'' to read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–QSB

* * * * *

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b–2 of the Exchange Act).

☐ Yes ☐ No

* * * * *

■ 18. Amend Form 10–K (referenced in § 249.310) by adding a check box on the cover page preceding the text that begins ''State the aggregate market value of the voting and non-voting common equity held by non-affiliates * * *,'' to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–K

* * * * *

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b–2 of the Exchange Act).

☐ Yes ☐ No

* * * * *

■ 19. Amend Form 10–KSB (referenced in § 249.310b) by:

■ a. Adding a check box on the cover page preceding the text ''State issuer's revenues for its most recent fiscal year''; and

■ b. Removing the text ''is not'' in the sentence on the cover page that begins ''Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S–B * * *''

The revision reads as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–KSB

* * * * *

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b–2 of the Exchange Act).

☐ Yes ☐ No

* * * * *

By the Commission.

Dated: July 15, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–14311 Filed 7–20–05; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 21, 2005

COMMERCE DEPARTMENT

Industry and Security Bureau

Export administration regulations:
Commerce Control List—
Nuclear grade graphite exports; licensing jurisdiction change; published 7-21-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
Roxarsone and semduramicin; published 7-21-05
Organization, functions, and authority delegations:
Center for Food Safety and Applied Nutrition; change of address; published 7-21-05

NUCLEAR REGULATORY COMMISSION

Nuclear equipment and material; export and import:
Nuclear grade graphite for non-nuclear end use; export licensing requirements removed; published 7-21-05

SOCIAL SECURITY ADMINISTRATION

Social security benefits:
Federal old age, survivors, and disability insurance—
Divided retirement systems coverage list and technical coverage corrections; update; published 7-21-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Grapes grown in California and imported grapes; comments due by 7-25-05; published 5-25-05 [FR 05-10440]
Prunes (dried) produced in—
California; comments due by 7-26-05; published 5-27-05 [FR 05-10469]
Tomatoes grown in—
Florida; comments due by 7-26-05; published 5-27-05 [FR 05-10468]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
Tuberculosis in cattle and bison; movement without individual tuberculin test; comments due by 7-25-05; published 5-24-05 [FR 05-10308]
Plant-related quarantine, domestic:
Pine shoot beetle; comments due by 7-25-05; published 5-26-05 [FR 05-10551]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
Conservation Security Program; comments due by 7-25-05; published 3-25-05 [FR 05-05894]
Cottonseed Payment Program; comments due by 7-25-05; published 6-24-05 [FR 05-12485]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:
Senior Farmers' Market Nutrition Program; comments due by 7-25-05; published 5-26-05 [FR 05-10388]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
Hazard analysis and critical control point (HACCP) system—
Mechanically tenderized beef products; compliance; comments due by 7-25-05; published 5-26-05 [FR 05-10471]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

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Conservation Security Program; comments due by 7-25-05; published 3-25-05 [FR 05-05894]
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

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Accessibility guidelines—
Large and small passenger vessels; comments due by 7-28-05; published 3-22-05 [FR 05-05636]

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Oregon Coast evolutionary significant unit of coho salmon; listing determination; comments due by 7-28-05; published 6-28-05 [FR 05-12350]
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North American green sturgeon; southern distinct population; comments due by 7-27-05; published 7-6-05 [FR 05-13264]
West Coast Oncorhynchus mykiss; listing determinations; comments due by 7-28-05; published 6-28-05 [FR 05-12348]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

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Pilot Mentor-Protege Program; comments due by 7-25-05; published 5-24-05 [FR 05-10226]
Quality assurance; comments due by 7-25-05; published 5-24-05 [FR 05-10234]
Service contracts and task and delivery orders approval; comments due by 7-25-05; published 5-24-05 [FR 05-10225]

DEFENSE DEPARTMENT

Engineers Corps

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Parris Island, SC; Marine Corps Recruit Depot; comments due by 7-25-05; published 6-23-05 [FR 05-12461]
Navigation regulations:
Lake Washington Ship Canal, Hiram M. Chittenden Locks, WA; scheduled operational hours; modification procedures; comments due by 7-25-05; published 5-25-05 [FR 05-10432]

EDUCATION DEPARTMENT

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Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

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Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

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Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

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Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]
Natural Gas Policy Act; natural gas companies (Natural Gas Act):
Natural gas reporting regulations; modification;

comments due by 7-25-05; published 6-10-05 [FR 05-11543]

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Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Washington; comments due by 7-29-05; published 6-29-05 [FR 05-12713]

Air quality implementation plans; approval and promulgation; various States:
- Ohio; comments due by 7-27-05; published 6-27-05 [FR 05-12659]
- Pennsylvania; comments due by 7-25-05; published 6-24-05 [FR 05-12581]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:
- Maine; comments due by 7-25-05; published 6-23-05 [FR 05-12453]
- Vermont; comments due by 7-25-05; published 6-23-05 [FR 05-12454]

Water pollution control:
- National Pollutant Discharge Elimination System—
  - Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Water pollution; effluent guidelines for point source categories:
- Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

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- Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

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  - Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]
- Price cap local exchange carriers; special access rates; comments due by 7-29-05; published 7-20-05 [FR 05-14420]
- Telephone Consumer Protection Act of 1991; implementation—
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  - Interstate telemarketing calls; declaratory ruling petitions; comments due by 7-29-05; published 6-29-05 [FR 05-12467]

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- Digital television receiver tuner requirements; comments due by 7-27-05; published 7-6-05 [FR 05-13029]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

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- Hospice care; participation conditions; comments due by 7-26-05; published 5-27-05 [FR 05-09935]

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- Cost reports; electronic submission; comments due by 7-26-05; published 5-27-05 [FR 05-10570]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

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- Food labeling—
  - Dietary noncariogenic carbohydrate sweeteners and dental caries; health claims; comments due by 7-27-05; published 5-13-05 [FR 05-09608]
- Salmonella; shell egg producers to implement prevention measures; comments due by 7-25-05; published 6-8-05 [FR 05-11407]

Human cells, tissues, and cellular and tissue-based products; donor screening and testing, and related labeling; comments due by 7-25-05; published 5-25-05 [FR 05-10583]

Reports and guidance documents; availability, etc.:
- Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
- Medical devices—
  - Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HEALTH AND HUMAN SERVICES DEPARTMENT

Health care programs; fraud and abuse:
- Health Insurance Portability and Accountability Act—
  - Data collection program; final adverse actions reporting; correction; comments due by 7-25-05; published 6-24-05 [FR 05-12481]

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Health care programs; fraud and abuse:
- Health Insurance Portability and Accountability Act—
  - Data collection program; final adverse actions reporting; correction; comments due by 7-25-05; published 6-24-05 [FR 05-12481]

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- Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

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- Virginia; comments due by 7-25-05; published 6-8-05 [FR 05-11397]

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- Pasquotank River, Elizabeth City, NC; marine events; comments due by 7-28-05; published 6-28-05 [FR 05-12730]
- Thunder over the Boardwalk; comments due by 7-26-05; published 7-11-05 [FR 05-13576]

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Endangered and threatened species permit applications
- Recovery plans—
  - Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Alaska; comments due by 7-25-05; published 6-23-05 [FR 05-12439]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
- Federal credit unions; fidelity bond and insurance coverage; comments due by 7-25-05; published 5-25-05 [FR 05-10380]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:
- Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

PERSONNEL MANAGEMENT OFFICE

Training:
- Reporting requirements; comments due by 7-26-05; published 5-27-05 [FR 05-10641]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
- Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:
- 2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 7-29-05; published 6-29-05 [FR 05-12839]
Boeing; comments due by 7-29-05; published 6-14-05 [FR 05-11708]
Bombardier; comments due by 7-26-05; published 5-27-05 [FR 05-10536]
Burkhart Grob; comments due by 7-25-05; published 6-21-05 [FR 05-12178]
Fokker; comments due by 7-29-05; published 6-29-05 [FR 05-12838]
Rolls-Royce plc; comments due by 7-26-05; published 5-27-05 [FR 05-10635]
Turbomeca S.A.; comments due by 7-26-05; published 5-27-05 [FR 05-10295]
Airworthiness standards:
Special conditions—
Diamond Aircraft Industries; comments due by 7-28-05; published 6-28-05 [FR 05-12720]
Class E airspace; comments due by 7-25-05; published 6-8-05 [FR 05-11326]

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National Highway Traffic Safety Administration

Civil monetary penalties; inflation adjustment; comments due by 7-25-05; published 5-25-05 [FR 05-10366]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Limitations on benefits and contributions under qualified plans; comments due by 7-25-05; published 5-31-05 [FR 05-10268]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:
USA PATRIOT Act; implementation—
Anti-money laundering programs for dealers in precious metal, stones, or jewels; comments due by 7-25-05; published 6-9-05 [FR 05-11431]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 120/P.L. 109–22
To designate the facility of the United States Postal Service located at 30777 Rancho California Road in Temecula, California, as the ''Dalip Singh Saund Post Office Building''. (July 12, 2005; 119 Stat. 365)

H.R. 289/P.L. 109–23
To designate the facility of the United States Postal Service located at 8200 South Vermont Avenue in Los Angeles, California, as the ''Sergeant First Class John Marshall Post Office Building''. (July 12, 2005; 119 Stat. 366)

H.R. 324/P.L. 109–24
To designate the facility of the United States Postal Service located at 321 Montgomery Road in Altamonte Springs, Florida, as the ''Arthur Stacey Mastrapa Post Office Building''. (July 12, 2005; 119 Stat. 367)

H.R. 504/P.L. 109–25
To designate the facility of the United States Postal Service located at 4960 West Washington Boulevard in Los Angeles, California, as the ''Ray Charles Post Office Building''. (July 12, 2005; 119 Stat. 368)

H.R. 627/P.L. 109–26
To designate the facility of the United States Postal Service located at 40 Putnam Avenue in Hamden, Connecticut, as the ''Linda White-Epps Post Office''. (July 12, 2005; 119 Stat. 369)

H.R. 1072/P.L. 109–27
To designate the facility of the United States Postal Service located at 151 West End Street in Goliad, Texas, as the ''Judge Emilio Vargas Post Office Building''. (July 12, 2005; 119 Stat. 370)

H.R. 1082/P.L. 109–28
To designate the facility of the United States Postal Service located at 120 East Illinois Avenue in Vinita, Oklahoma, as the ''Francis C. Goodpaster Post Office Building''. (July 12, 2005; 119 Stat. 371)

H.R. 1236/P.L. 109–29
To designate the facility of the United States Postal Service located at 750 4th Street in Sparks, Nevada, as the ''Mayor Tony Armstrong Memorial Post Office''. (July 12, 2005; 119 Stat. 372)

H.R. 1460/P.L. 109–30
To designate the facility of the United States Postal Service located at 6200 Rolling Road in Springfield, Virginia, as the ''Captain Mark Stubenhofer Post Office Building''. (July 12, 2005; 119 Stat. 373)

H.R. 1524/P.L. 109–31
To designate the facility of the United States Postal Service located at 12433 Antioch Road in Overland Park, Kansas, as the ''Ed Eilert Post Office Building''. (July 12, 2005; 119 Stat. 374)

H.R. 1542/P.L. 109–32
To designate the facility of the United States Postal Service located at 695 Pleasant Street in New Bedford, Massachusetts, as the ''Honorable Judge George N. Leighton Post Office Building''. (July 12, 2005; 119 Stat. 375)

H.R. 2326/P.L. 109–33
To designate the facility of the United States Postal Service located at 614 West Old County Road in Belhaven, North Carolina, as the ''Floyd Lupton Post Office''. (July 12, 2005; 119 Stat. 376)

S. 1282/P.L. 109–34
To amend the Communications Satellite Act of 1962 to strike the privatization criteria for INTELSAT separated entities, remove certain restrictions on separated and successor entities to INTELSAT, and for other purposes. (July 12, 2005; 119 Stat. 377)

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